

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 12-14468  
Non-Argument Calendar

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D.C. Docket No. 1:11-cr-20698-RNS-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK J. BALLESTEROS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida

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(July 11, 2013)

Before WILSON, PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Frank J. Ballesteros appeals his conviction for conspiracy to commit health care fraud. See 18 U.S.C. §§ 1347, 1349. Ballesteros argues that the district court

erred by failing sua sponte to instruct the jury about the substantive elements of health care fraud. We affirm.

During trial, the district court twice discussed jury instructions with Ballesteros. Before the final day of testimony, the district court asked Ballesteros if he had reviewed the instructions proposed by the government, and Ballesteros responded affirmatively and said that he had no objections to them. Later, after the district court filed a set of instructions that were virtually identical to those proposed by the government, the court asked Ballesteros if he had “any objections, additions, deletions, [or] any additional instructions that [he] want[ed].” Ballesteros responded, “No, Your Honor. The instructions are acceptable.”

Ballesteros invited any error related to the omission of a jury instruction. A party invites error by inducing or agreeing to a decision that it later claims constitutes error. See United States v. Love, 449 F.3d 1154, 1157 (11th Cir. 2006); see also United States v. Fulford, 267 F.3d 1241, 1246–47 (11th Cir. 2001).

Ballesteros’s negative response to the question if there were “additional instructions that [he] want[ed]” communicated to the district court that its instructions were complete. Ballesteros is barred from complaining on appeal that he is entitled to another instruction.

We **AFFIRM** Ballesteros’s conviction.