

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13621
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAICOR ELIUD CEPEDA-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00542-SDM-AEP-1

Before JORDAN, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Maicor Cepeda-Garcia appeals his conviction for conspiracy to traffic firearms, in violation of 18 U.S.C. § 933(a)(3). He argues that the district court plainly erred in finding that he knowingly,

intelligently, and voluntarily entered his guilty plea because the court did not inform him of the nature of the charges against him. He also argues that the court erred in failing to inquire into an apparent conflict of interest between him and his counsel created by the sentence-appeal waiver in his plea agreement.

I

In December of 2024, a grand jury charged Mr. Cepeda-Garcia and Jonathan Ortega-Martinez in a three-count indictment with (1) conspiracy to traffic firearms, in violation of 18 U.S.C. § 933(a)(3) (Count 1); (2) firearms trafficking, in violation of § 933(a)(1) (Count 2); and dealing in firearms without a license, in violation of § 922(a)(1)(A) (Count 3). Under the terms of a written plea agreement, Mr. Cepeda-Garcia agreed to plead guilty to Count 1 in exchange for the government's agreement to dismiss Counts 2 and 3, to not charge him with other federal offenses known at the time of the agreement, and to recommend (1) a sentence within his advisory guideline range and (2) a three-level reduction to his offense level under U.S.S.G. § 3E1.1(a) based on his acceptance of responsibility.

A

In June of 2025, Mr. Cepeda-Garcia signed a plea agreement with the government indicating his intent to plead guilty. He and his counsel certified that they had read the entire agreement and understood its terms. The magistrate judge, however, declined to accept the plea because Mr. Cepeda-Garcia did not admit the essential elements of the offense. Specifically, after the government

read the factual basis for the plea, the magistrate judge asked if the factual basis was accurate, and Mr. Cepeda-Garcia answered, “[n]ot exactly.” D.E. 158 at 30. Mr. Cepeda-Garcia elaborated that the government had mentioned Puerto Rico and a crime scene in a different country, which he did not know about, that there were not any packing materials in his house, and that the firearms in his house were for personal use.

At this point, the magistrate judge paused to ask the government to clarify Mr. Cepeda-Garcia involvement with the criminal conspiracy to traffic firearms. In response, Mr. Cepeda-Garcia explained that “I did listen to [the government] clarify things and stat[e] that I did not directly do that, but there did come a point where I am connected; however, I’m not responsible for those other things.” *Id.* at 36. The magistrate judge asked Mr. Cepeda-Garcia if he obtained firearms from others and repackaged them to send them to Miami, and he initially answered yes. Then he added, “I didn’t buy the firearms, but at some point I did help package them.” *Id.* He elaborated, “[o]n occasion I was paid, but I didn’t ship any firearms anywhere either.” *Id.* The magistrate judge then asked if he put the firearms in boxes because he knew that they would be shipped, and he answered, “Yes, but at that point I didn’t know that it was something illegal. I do accept responsibility that it was something illegal.” *Id.* Unsatisfied with these responses, both the magistrate judge and the government agreed that it would not be prudent to proceed to the change of plea. Instead, the magistrate judge recommended that Mr. Cepeda-Garcia talk to his counsel off the record.

After Mr. Cepeda-Garcia's spoke with his counsel off the record, counsel stated that he was prepared to go forward with his guilty plea subject to certain modifications of the factual basis. The magistrate judge responded that he could not proceed because Mr. Cepeda-Garcia had said that he did not know his conduct was illegal. The magistrate judge offered to revisit the matter at a later date, after Mr. Cepeda-Garcia and his counsel had further discussions. Subsequently, Mr. Cepeda-Garcia filed an unopposed motion to continue his trial, which the district court granted to provide counsel additional time to negotiate a plea agreement.

B

On July 2, 2026, Mr. Cepeda-Garcia signed and initialed a second plea agreement that was identical to the prior plea agreement, apart from its factual basis. The factual basis in the second plea agreement was similar to that of the prior agreement, but made a number of changes.

The factual basis asserted that Mr. Cepeda-Garcia was part of a conspiracy that trafficked more than 250 firearms, and removed co-defendant 4's statement that Mr. Cepeda-Garcia was the organizer of the conspiracy. The factual basis described how surveillance footage from 2023 showed Mr. Cepeda-Garcia and co-defendant 1 obtaining firearms by entering co-defendant 4's residence, walking out with packages wrapped in firearms packaging material, and loading the packages into co-defendant 1's car. The factual basis also included a photo of Mr. Cepeda-Garcia carrying

one such box to a car and two photos from a video of co-defendant 1 packaging firearms into boxes for light fixtures.

The factual basis further described surveillance footage from one occasion in 2024 that depicted co-defendant 1 and Mr. Cepeda-Garcia unpacking three parcels from a car, transporting them into a house, loading two parcels from the house into a car, and driving to a UPS store, where co-defendant 1 used a false name to drop off the parcels. Law enforcement seized the parcels, determining that they each contained two rifle styled firearms and accessories and that their destination was Miami. A UPS employee stated that co-defendant 1 had come into the store approximately 20 times and shipped as many as six boxes at one time. The factual basis omitted any reference to the personal firearms recovered from the residence of Mr. Cepeda-Garcia. Mr. Cepeda-Garcia and his counsel signed the second plea agreement certifying that they both read the agreement in its entirety and that Mr. Cepeda-Garcia fully understood its terms.

On the same day, July 2, 2026, the magistrate judge held a second change-of-plea hearing. *See* D.E. 147 at 1. The magistrate judge asked Mr. Cepeda-Garcia whether he recalled the discussions at his prior change-of-plea hearing, and he answered yes. The magistrate judge swore him in after he acknowledged the penalties for false testimony under oath and confirmed that he had agreed to plead guilty to Count 1. The magistrate judge restated the elements

of the offense as listed in the plea agreement and asked if he understood what the government would have to prove to show that he was guilty of Count 1. He answered yes.

Then, the government read the factual basis from his second plea agreement, which incorporated the changes described above. *See id.* at 5-11. The government noted that Mr. Cepeda-Garcia had not agreed to the assertion in the factual basis about the eight firearms that the ATF traced to a crime scene in the Dominican Republic. The magistrate judge asked Mr. Cepeda-Garcia if he disagreed with the factual basis as described by the government, and he answered no. The magistrate judge then inquired whether he had received firearms from others, concealed them in packages, and sent them by post, and he stated, “I help[ed] ☐ package them, but I did not send them.” *Id.* at 12. The magistrate judge further inquired whether he drove with co-defendant 1 to the UPS store where the latter dropped off the packages, and he responded, “on that day I was in the car.” *Id.* When the magistrate judge asked whether he packaged firearms to deliver on other occasions, he answered, [n]ot all that quantity.” *Id.* at 13. The magistrate judge repeated the prior question, and this time he answered yes. The magistrate judge incorporated all discussions from the prior hearing into the record.

The magistrate judge then inquired into whether (1) Mr. Cepeda-Garcia was satisfied with the advice and representation of his counsel; (2) his counsel had done all that he had asked; (3) he had discussed all of his options with counsel, including proceeding

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to trial; and (4) he was satisfied with his choice to plead guilty after discussing his case with counsel, and he answered yes. *See id.* at 13-14. The magistrate judge confirmed that Mr. Cepeda-Garcia was competent and wished to have his plea heard by the magistrate judge, rather than the district court. The magistrate judge similarly ensured that he had signed and initialed the second plea agreement, reviewed and discussed it with counsel, and understood all its provisions. The magistrate judge reviewed the penalties associated with Count 1 and emphasized that the district court was not bound by the plea agreement and could reject its recommendations, which would not permit him to withdraw his plea.

The magistrate judge also reviewed the terms of the sentence-appeal waiver, including its four exceptions, and emphasized that this provision “specifically waived [his] right to appeal the sentence unless one of those” four exceptions applied. *Id.* at 23. The magistrate judge confirmed that Mr. Cepeda-Garcia’s plea was voluntary and explained the advisory nature of the Guidelines, the unpredictable nature of his sentence, and how sentencing functioned. The magistrate judge went over each of his trial rights and asked if Mr. Cepeda-Garcia understood that his guilty plea would waive all of these rights. He answered yes.

The magistrate judge explained that it did not matter to him whether he pled guilty or proceeded to trial, and Mr. Cepeda-Garcia stated that he understood. The magistrate judge asked whether he wanted to plead guilty, and he answered yes. The magistrate judge again asked how he pled to Count 1, which charged him with

conspiring to traffic firearms in violation of § 933(a)(3), and he answered guilty. He confirmed that he pled guilty because he was in fact guilty. The magistrate judge asked Mr. Cepeda-Garcia if he had any questions or matters that were not covered, and he answered no.

The magistrate judge then found, based on the first and second change-of-plea hearings, that Mr. Cepeda-Garcia was competent to enter a guilty plea, and knowingly, intelligently, and voluntarily entered a guilty plea supported by an independent factual basis on each of the elements of Count 1. The magistrate judge explained that it would prepare a report and recommendation (“R&R”) advising the district court to accept his plea, that he would have 14 days to object to the R&R or the court would likely accept his plea, and that the Probation Office would prepare a PSI before sentencing.

The magistrate judge prepared a R&R that recommended accepting Mr. Cepeda-Garcia’s guilty plea on Count 1 and adjudicating him guilty. The R&R stated that the parties had 14 days to file objections, and failure to do so would waive their rights to change unobjected-to factual findings or legal conclusions. The district court adopted the R&R, accepted his plea, and adjudicated him guilty of Count 1, noting that Mr. Cepeda-Garcia had not objected to the R&R. The district court later sentenced Mr. Cepeda-Garcia to 180 months’ imprisonment on Count 1.

Mr. Cepeda-Garcia appealed. His counsel filed a motion to withdraw, stating that Mr. Cepeda-Garcia indicated to him that he

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planned to raise a claim of ineffective assistance of counsel on appeal, such that counsel could not ethically continue representing him. The court granted counsel's motion to withdraw and appointed him new counsel on his appeal. Mr. Cepeda-Garcia then wrote a letter in Spanish to the district court, which interpreted the letter as a pro se motion to revoke or reduce his sentence due to ineffective assistance of counsel. The court denied his motion without prejudice as premature because his direct appeal was pending.

II

Mr. Cepeda-Garcia argues that the district court plainly erred in failing to inform him of the nature of the offense before he entered his guilty plea because the court did not mention two additional elements listed in this Court's pattern jury instructions for criminal conspiracies, namely, that one of the conspirators knowingly engaged in at least one overt act described in the indictment during the conspiracy and that this overt act was committed around the alleged time to further the conspiracy. The government argues that Mr. Cepeda Garcia waived any challenge to the district court's acceptance of his guilty plea and, alternatively, that he cannot show the magistrate judge plainly erred in informing him of the nature of the charge.

When a defendant fails to object to a violation of Federal Rule of Criminal Procedure 11 in the district court, we review for plain error. *See United States v. Monroe*, 353 F.3d 1346, 1349 (11th Cir. 2003). Under plain-error review, the defendant has the burden of showing there is (1) error; (2) that is plain; and (3) that affects his

substantial rights. *Id.* If all three conditions are met, then we may exercise our discretion to notice a forfeited error, but only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.* Further, “a defendant who seeks reversal of his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11, must show a reasonable probability that, but for the error, he would not have entered the plea.” *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004).

On plain-error review, we may review the whole record when considering the effect of any error on substantial rights. *See Monroe*, 353 F.3d at 1350. An appellant abandons an issue on appeal by not raising it in his opening brief. *See United States v. Cannon*, 987 F.3d 924, 939 (11th Cir. 2021).

A district court may designate a magistrate judge to conduct hearings and issue proposed findings of fact and recommendations. *See* 28 U.S.C. § 636(b)(1)(A), (b)(1)(B). Generally, a party may object to a report and recommendation within 14 days, and the district court shall make a de novo determination of those portions of the R&R to which an objection was made. *See* § 636(b)(1). When a party fails to object to a magistrate judge’s findings or recommendations contained in a R&R, that party “waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object.” 11th Cir. R. 3-1. *See also* Fed. R. Crim. P. 59(b)(2) (stating

that the failure to object to an R&R within 14 days waives the right to review the proposed findings and recommendations). Under Rule 3-1, in the absence of a proper objection, we may still review a challenge on appeal for plain error “if necessary in the interests of justice.” 11th Cir. R. 3-1.

Before a district court can accept a guilty plea, it must inform the defendant of his rights should he plead not guilty, the nature of the charges against him, the potential penalties, the court’s obligation to calculate his advisory guideline range, and any plea agreement provision waiving his right to appeal. *See* Fed. R. Crim. P. 11(b)(1)(B)-(E), (G)-(N). The court must also explain that a guilty plea waives the defendant’s trial rights and ensure that the plea is entered voluntarily and is supported by a sufficient factual basis. *See* Fed. R. Crim. P. 11(b)(1)(F), (b)(2)-(3). Further, the court must explain that the defendant can be prosecuted for perjury for testifying falsely under oath. *See* Fed. R. Crim. P. 11(b)(1)(A).

Determining that a defendant’s guilty plea is knowing and voluntary, the district court must conduct a plea colloquy to ensure that the three core concerns of Rule 11 are met: “(1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea.” *United States v. Freixas*, 332 F.3d 1314, 1318 (11th Cir. 2003) (quotation marks omitted).

Whether the district court has complied with the second core principle depends on a variety of factors, including the complexity of the offense and the defendant's sophistication and intelligence. See *United States v. Presendieu*, 880 F.3d 1228, 1238-39 (11th Cir. 2018). "There is no rigid formula or 'mechanical rule' for determining whether the district court adequately informed the defendant of the nature of the charges." *Id.* at 1238 (citation omitted). "Importantly, Rule 11 does not specify that a district court must list the elements of an offense." *Id.* (citations omitted). For simple charges, it will usually suffice for the district court to read the indictment and allow the defendant to ask any questions that he may have about it. See *id.* at 1239. "Notably too, in some cases, a factual proffer may set forth in such detail the facts of the crime that it effectively incorporates the substance of the elements of the offense." *Id.* (citing *United States v. Wiggins*, 131 F.3d 1440, 1442 (11th Cir. 1997)).

In contrast, we have held that a district court plainly erred in failing to inform the defendant of the nature of the charges against him by merely asking him, "[h]ave you seen the indictment or have you had the indictment read to you so that you understand exactly how you are charged in counts one and three, and what the Government [] would have to prove in order that you be convicted?" *United States v. Telemaque*, 244 F.3d 1247, 1249 (11th Cir. 2001) (alteration added). We emphasized in *Telemaque* that "[t]he court did not refer to the elements of the offense in inviting the Government's proffer, nor was there any statement on the record that

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Telemaque's counsel assisted Telemaque in understanding the charges." *Id.*

"Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea." Fed. R. Crim. P. 11(b)(3). "A factual basis for the plea simply means that there must be evidence from which a court could reasonably find that the defendant was guilty, and uncontroverted evidence of guilt is not required." *United States v. Rodriguez*, 751 F.3d 1244, 1255 (11th Cir. 2014) (quotation marks omitted).

Under 18 U.S.C. § 933, titled "Trafficking in firearms," it is unlawful to:

- (1) ship, transport, transfer, cause to be transported, or otherwise dispose of any firearm to another person in or otherwise affecting interstate or foreign commerce, if such person knows or has reasonable cause to believe that the use, carrying, or possession of a firearm by the recipient would constitute a felony (as defined in section 932(a));
- (2) receive from another person any firearm in or otherwise affecting interstate or foreign commerce, if the recipient knows or has reasonable cause to believe that such receipt would constitute a felony; or
- (3) attempt or conspire to commit the conduct described in paragraph (1) or (2).

18 U.S.C. § 933(a)(1)-(3).

As an initial matter, we review Mr. Cepeda-Garcia's Rule 11 challenge for plain error because he did not object under Rule 11

at his second plea colloquy, even after the magistrate judge advised him of the consequences of pleading guilty. *See Monroe*, 353 F.3d at 1349; D.E. 147 at 29–30. Nor did he object to the R&R’s recommendation that the district court accept his guilty plea. Although Mr. Cepeda-Garcia argues that the record does not indicate whether the R&R was mailed to him or included a certificate of service, he has abandoned this argument by raising it for the first time in his reply brief. *See Cannon*, 987 F.3d at 939. Moreover, he had sufficient notice of the time period to object because the magistrate judge informed him of the 14-day period to object at his July 2025 change-of-plea hearing. But even assuming the interests of justice warrant review, Mr. Cepeda-Garcia cannot show that the magistrate judge failed to inform him of the nature of the charges against him.

Citing to our pattern jury instructions for general conspiracies charges under 18 U.S.C. § 371, Mr. Cepeda-Garcia claims the magistrate judge failed to advise him of the third and fourth elements of his conspiracy charge. As an important distinction, though, Mr. Cepeda-Garcia was not charged with a general conspiracy under § 371. Rather, he was charged with conspiring to traffic firearms in violation of 18 U.S.C. § 933(3). And there is no case holding that an over act is an element of a § 933(3) conspiracy offense.

Despite Mr. Cepeda-Garcia’s contentions otherwise, each element of his offense was expressly addressed at the second plea

hearing. And when the magistrate judge asked whether he understood what the government would have to demonstrate to show he was guilty, Mr. Cepeda-Garcia responded affirmatively.

Mr. Cepeda-Garcia essentially argues that because the magistrate judge did not recite each of the elements of the firearms trafficking conspiracy charge verbatim as stated in 18 U.S.C. § 933, he was not fully advised of the nature of the offense against him. We disagree. Although the magistrate judge could have recited each element or independently explained each element of the firearms-trafficking conspiracy charge in more detail, he was not required to under our precedent. *See Presendieu*, 880 F.3d at 1238-39.

After reciting the elements of the charge as written in the plea agreement, the magistrate judge allowed the government to read the factual basis from the plea agreement, which incorporated the elements of the offense. This was sufficient. *See id.* at 1239–41; *Wiggins*, 131 F.3d at 1442. Following the government’s recitation of the factual basis, Mr. Cepeda-Garcia unequivocally admitted, on the record, that he agreed to participate in a firearms-trafficking conspiracy that involved obtaining firearms illegally through straw-purchases by co-conspirators, concealing those firearms in light-fixture packaging, and shipping the packages to recipients elsewhere for distribution overseas. These admissions, standing alone, satisfy every element of the charged conspiracy offense and therefore supply an adequate factual basis for the plea. *See United States v. Puentes-Hurtado*, 794 F.3d 1278, 1287 (11th Cir. 2015). Un-

der these circumstances, we find no error in the district court finding that Mr. Cepeda-Garcia understood the nature of the charges against him and that his plea was informed.

We further note that Mr. Cepeda-Garcia has offered no argument that there was any probability that he would have declined entering into the plea absent the alleged error. For this reason too, Mr. Cepeda-Garcia has failed to demonstrate plain error.

III

Mr. Cepeda-Garcia also argues that the appeal waiver in his plea agreement created an obvious conflict of interest between him and his counsel because it barred him from challenging his sentence on ineffective-assistance-of-counsel grounds. He contends that this conflict triggered the district court's duty to inquire and that, because the court made no inquiry, his conviction must be automatically reversed.

On this issue, Mr. Cepeda Garcia's argument stumbles out of the gate because we have held that automatic reversal is reserved for cases in which defense counsel is forced to represent codefendants over a timely objection. *Dallas v. Warden*, 964 F.3d 1285, 1303 (11th Cir. 2020) (citing *Mickens v. Taylor*, 535 U.S. 162, 168, (2002)). Outside that narrow context, when a district court fails to adequately inquire into a conflict of interest that it knows or reasonably should know about, "reversal is only warranted if the [defendant] shows an actual conflict that negatively affected his attorney's performance." *Id.* at 1303–04.

Moreover, by its terms the appeal waiver only applies to challenges to the sentence, and not the conviction. *See* D.E. 96 at

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17-18. And the appeal waiver does not prevent Mr. Cepeda-Garcia from filing a motion to vacate based on ineffective counsel grounds. *See* 28 U.S.C. § 2255. We have explained that we will not address ineffective assistance of counsel claims on direct criminal appeal, “[e]xcept in the rare instance when the record is sufficiently developed.” *United States v. Curbelo*, 726 F.3d 1260, 1267 (11th Cir. 2013) (quoting *United States v. Verbitskaya*, 406 F.3d 1324, 1337 (11th Cir. 2005)). Instead, a defendant should raise an ineffective-assistance-of-counsel claim in a § 2255 motion. *See Massaro v. United States*, 538 U.S. 500, 504–09 (2003). Notably, a conflict of interest issue is akin to an ineffective counsel issue, therefore, it is proper for a § 2255 motion. *See* U.S. Const. amend. VI (providing every criminal defendant the right to effective assistance of counsel). *See also United States v. Jones*, 52 F.3d 924, 925 (11th Cir. 1995) (providing that an attorney’s conflict of interest may deprive a criminal defendant of his constitutional right to the effective assistance of counsel).

In sum, the appeal waiver does not create an inherent conflict of interest that vitiates Mr. Cepeda-Garcia’s guilty plea.

IV

Accordingly, we affirm Mr. Cepeda-Garcia’s conviction and sentence on Count 1.

AFFIRMED.