



request payment, but also makes specific representations about the goods or services provided; and second, the defendant's failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths." See Universal Health Servs., 136 S. Ct. at 1995, 2001.

Here, Ding was not charged under the False Claims Act, and his case concerned affirmative misrepresentations not mere misrepresentations by omission. Nonetheless, he claims entitlement to relief under the materiality standard that the Court reiterated in Universal Health Services. There, the Court rejected the "First Circuit's view of materiality: that any statutory, regulatory, or contractual violation is material so long as the defendant knows that the Government would be entitled to refuse payment were it aware of the violation." See id. at 2004. It explained that the common law has long held that "[t]he term 'material' means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." See id. at 2002 (citing Neder v. United States, 527 U.S. 1, 16 (1999)). Materiality "look[s] to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation" and "cannot be found where noncompliance is minor or insubstantial." See id. at 2002-03 (citing 26 Williston on Contracts § 69:12 at 549 (4th ed. 2003)).

Even if Universal Health Services applies to this case, our instructions to the jury on the issue of materiality were consistent with it. We instructed the jury:

[t]he false or fraudulent representation (or failure to disclose) must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find that a particular statement of fact was false, you must determine whether that statement was one that a reasonable person would have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

Not only was the jury correctly instructed on the applicable law, but, as we discussed at length in our April 2016 Memorandum, there was sufficient evidence of materiality in the record to support the jury's decision to convict Ding on Counts Five through Ten.

All other arguments raised by Ding in the supplemental motion for judgment of acquittal are untimely. See Fed. R. Crim. P. 29(c); Carlisle v. United States, 517 U.S. 416, 433 (1996).

Accordingly, we will deny the supplemental motion of Yujie Ding for judgment of acquittal.

