

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellant,</i> v. BRUCE WEYHRAUCH, <i>Defendant-Appellee.</i>
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No. 07-30339
D.C. No.
3:07-cr-00056-
JWS-JDR-2
ORDER

On Remand from the United States Supreme Court

Filed September 27, 2010

Before: Dorothy W. Nelson, A. Wallace Tashima and
Raymond C. Fisher, Circuit Judges.

ORDER

This case is on remand from the Supreme Court in light of the Court's decision in *Skilling v. United States*, 130 S. Ct. 2896 (2010). *See Weyhrauch v. United States*, 130 S. Ct. 2971 (2010). In light of *Skilling*, we affirm the district court's denial of the government's motion in limine.

Under *Skilling*, nondisclosure of a conflict of interest is no longer a basis for prosecution under 18 U.S.C. § 1346. *See Skilling*, 130 S. Ct. at 2932. *Skilling* therefore precludes the government from offering evidence to prove a violation of § 1346 based on such nondisclosure. Here, the government sought to introduce evidence to prove "a knowing concealment of a conflict of interest." Because *Skilling* does not permit the government to prove a violation of § 1346 on that basis, we affirm the district court's evidentiary order.

We express no opinion whether the evidence is otherwise admissible, or whether the government has alleged facts sufficient to pursue a § 1346 prosecution consistent with *Skilling*.

AFFIRMED AND REMANDED.