

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,
v.
BRUCE WEYHRAUCH,
Defendant-Appellee.

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.

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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.