

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>  v.  DAVID CHI PING LEUNG, <i>Defendant-Appellant.</i>
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No. 03-50098  
D.C. No.  
CR-01-00492-  
ABC-01  
ORDER

On Remand from the United States Supreme Court

Filed August 4, 2005

Before: Alfred T. Goodwin, Harry Pregerson, and  
Richard C. Tallman, Circuit Judges.

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**ORDER**

David Leung was convicted of possession with intent to distribute methylenedioxy-methamphetamine (“Ecstasy”) in violation of 21 U.S.C. § 841(a)(1), and was sentenced to a term of imprisonment of 151 months. Leung appealed the admission of expert testimony regarding unknowing couriers, the admission of his post-arrest statements, the district court’s refusal to give a “mere presence” instruction to the jury, the sufficiency of the evidence, and the denial of a sentencing adjustment. We affirmed Leung’s conviction and sentence in a memorandum disposition. *United States v. Leung*, 95 Fed. Appx. 876 (9th Cir. 2004). The Supreme Court vacated that disposition and remanded to this court in light of *United States v. Booker*, \_\_\_ U.S. \_\_\_, 125 S. Ct. 738, 160 L.Ed.2d 621 (2005). *Leung v. United States*, \_\_\_ U.S. \_\_\_, 125 S. Ct. 1046, 160 L.Ed.2d 992 (2005). We now reaffirm Leung’s conviction for the reasons stated in our original disposition.

*See Leung*, 95 Fed. Appx. at 876. We grant a limited remand to allow the district court to determine “whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were advisory.” *United States v. Ameline*, 409 F.3d 1073, 1074 (9th Cir. 2005) (*en banc*).

**REMANDED.**



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