

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES)	
))	
v.)	CRIMINAL 04-10384-PBS
))	
DANIEL KAMEN,)	
Defendant.)	
_____)	

ORDER

October 3, 2008

Saris, U.S.D.J.

On January 19, 2007, this Court issued a Memorandum and Order allowing the defendant's motion for a new trial pursuant to Fed. R. Crim. P. 33, but denying the defendant's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). (See Docket No. 91.) The Court deferred ruling on his motion to vacate the receipt conviction and to enter a judgment of guilty on the lesser included offense of possession of child pornography. (Id.)

During trial, the Court had denied Kamen's motion for a directed verdict on the receipt charge finding that the evidence to convict was sufficient. (Docket No. 71.)

On June 12, 2007, the Court issued a Memorandum and Order, holding, "The government introduced sufficient evidence to sustain a conviction for knowing receipt of child pornography." United States v. Kamen, 491 F. Supp. 2d 142, 152 (D. Mass. 2007).

The Court reiterated its earlier holdings and denied the motion to vacate the conviction and enter a judgment of guilty on the lesser charge. Id. The government appealed, but then voluntarily dismissed the appeal. (Docket No. 116.)

The trial was continued a few times due to scheduling problems. On August 22, 2008, shortly before the rescheduled retrial, defendant moved to dismiss the indictment on the ground that insufficient evidence was presented at his first trial and retrial is barred by the Double Jeopardy Clause. (Docket No. 133.) The Court declines to revisit its earlier rulings. For the reasons stated in the earlier Memorandum and Order, the motion is **DENIED**.

S/PATTI B. SARIS
United States District Judge