

## Case Brief

Crim Law, Hughes, 1/3/15

### Identity of Case

United States v. Dauray, 215 F.3d 257 (2d Cir. 2000).

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### Summary of Facts

Defendant & Appellant Charles Dauray was arrested in possession of pictures cut from magazines which depicted child genitalia and/or child pornography. The relevant statute (18USC Sec. 2252(a)(4)(B)) punishes the possession of "3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction of minors engaging in sexually explicit conduct."

### Procedural History

Defendant was convicted and appeals, asking for rule of lenity as the statute is vague.

### Statement of the Issue

How should the courts interpret "matter which contain any visual depiction?" Is this specific enough to serve the proper predictive functions of the law?

### Holding

Where alternate interpretations of the statute are both reasonably plausible, the statute is too vague and the rule of lenity applies.

### Reasoning

The court found that the various methods of interpretation of argued by the parties were reasonable. If alternative interpretations are reasonable, the average citizen does not have a reasonable basis for whether to predict whether an act they could commit will result in punishment.

Plain meaning: the plain meaning of contain is "to have within; hold." A magazine contains pictures. Does a picture contain itself? That seems redundant. Contain also means "to consist of wholly or in part; comprise; include." This would also be redundant applied to a picture. The Gov't argued that the paper itself is matter, which contains the picture printed on it. The definition of matter is even more elusive, a basically "everything is more or less organized matter."

Rules regarding lists: "the meaning of doubtful terms or phrases may be determined by reference to their relationship with other associated words or phrases." "where general words follow a specific enumeration of persons or things, the general words should be limited to persons or things similar to those specifically enumerated."

Defendant: the listed items form a category of picture containers that can enclose within them multiple visual depictions...

Gov't: the list can be read to include any physical medium or method capable of presenting visual depictions.

Statutory structure: "a statute is to be considered in all its parts when construing any one of them". This rule leads to the same result as the rule on lists.

Statutory amendments: can give a sign of legislative intent: in this case, the amendment uses the same terms and is subject to the same messy alternative interpretations.

Avoiding absurdity: a statute should be interpreted in a way that avoids absurd results. The court kind of dismisses it as a valid rule of interpretation, as it is too easy to bring any statute to absurd results. In any case either party's method of interpretation could lead to absurd results.

Legislative history: in this case, reveals no insight.

Why does a statute have to be clear: "due process requires that a criminal statute give fair warning of the conduct that it makes a crime." Ambiguity, therefore, must go in favor of the defendant.

### Evaluation

Dissent: concedes that the ambiguity described by the court exists, but states that it is not a grievous enough ambiguity to allow the application of the rule of lenity. There is precedent where the rule is *not* applied. "To invoke the rule, we must conclude that there is a grievous ambiguity or uncertainty in the statute."