

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2188

United States of America,

Appellee,

v.

Robert G. Horn,

Appellant.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: November 7, 2002

Filed: November 19, 2002

Before HANSEN, Chief Judge, and MORRIS SHEPPARD ARNOLD, and
MELLOY, Circuit Judges.

PER CURIAM.

Robert G. Horn appeals the district court's¹ denial of his Federal Rule of Criminal Procedure 33 motion for a new trial based on newly discovered evidence, following his conviction for possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) (1994). After careful review of the record, we find that the district court did not abuse its discretion in concluding that the new evidence submitted by

¹The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

Mr. Horn was merely impeaching and would not be likely to produce an acquittal at a new trial. See United States v. Provost, 969 F.2d 617, 620 (8th Cir. 1992) (standard of review), cert. denied, 506 U.S. 1056 (1993); United States v. Duke, 255 F.3d 656, 659 (8th Cir.) (criteria for granting new trial based on newly discovered evidence), cert. denied, 122 S. Ct. 550 (2001).

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.