

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHAD R. BALDWIN

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2009-CA-00186

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Criminal Division, Case
No. 2005-CR-00649

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 6, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

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Hoffman, J.

{¶1} Defendant-appellant Chad R. Baldwin appeals the June 15, 2009 Judgment Entry of the Stark County Court of Common Pleas denying his motion for new trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 15, 2005, the Stark County Grand Jury indicted Appellant on one count of grand theft in violation of R.C. 2913.02. The indictment alleged as a continuous course of conduct from May 1, 2004 through January 14, 2005, Appellant purposefully deprived his employer, Midwest Direct, of money in excess of \$5,000.00 but less than \$100,000.00. Appellant processed credit card charge backs from the business account to his personal credit card. Appellant admitted to the credit card charge backs contending he was owed the monies as wage reimbursements.

{¶3} A jury trial commenced on January 9, 2006. The jury found Appellant guilty as charged. By Judgment Entry filed February 17, 2006, the trial court sentenced Appellant to sixteen months in prison, but granted judicial release on April 17, 2006.

{¶4} On July 9, 2007, this Court affirmed Appellant's conviction in *State v. Baldwin*, Stark App. No. 2006CA00076, 2007-Ohio-3511.¹

{¶5} Subsequent to his criminal conviction, Appellant filed a lawsuit against his employer in the Federal District Court, Northern District of Ohio, alleging Midwest Direct violated Federal wage laws and claiming monies owed for back wages. The parties subsequently settled the lawsuit.

¹ A recitation of the facts supporting Appellant's conviction may be found therein but we find doing so again unnecessary to our resolution of this appeal.

{¶16} On November 18, 2008, Appellant filed a motion for a new trial with the trial court alleging newly discovered evidence. Specifically, Appellant asserts newly discovered evidence in the settlement of the federal lawsuit relative to his wage claims and inconsistent testimony of prior fellow employees in that lawsuit and his criminal trial. The trial court conducted a hearing on Appellant's motion for new trial on December 10, 2008. On June 15, 2009, the trial court, via Judgment Entry, denied Appellant's motion for a new trial.

{¶17} Appellant now appeals, assigning as error:

{¶18} "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE."

{¶19} Ohio Civil Rule 33 governs motions for a new trial:

{¶10} **"(A) Grounds**

{¶11} "A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

{¶12} ********

{¶13} "(6) When new evidence material to the defense is discovered *which the defendant could not with reasonable diligence have discovered and produced at the trial*. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the

circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.” (Emphasis added.)

{¶14} Appellant maintains the settlement of his federal lawsuit claims is conclusive, newly discovered evidence he was owed almost \$25,000 in back wages, and he and his employer had agreed on a \$400.00 weekly salary plus commissions as the amount owed to Appellant. Appellant further maintains the credibility of the State’s witnesses would have been contradicted in light of the federal litigation.

{¶15} In *State v. Petro* (1947), 148 Ohio St. 505, the Ohio Supreme Court set forth the following standard:

{¶16} “To warrant the granting of a motion for a new trial in a criminal case, based on the ground of newly discovered evidence, it must be shown that the new evidence (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence. (*State v. Lopa*, 96 Ohio St. 410, 117 N.E. 319, approved and followed.)”

{¶17} Upon review of the above, Appellant has not demonstrated he was unavoidably prevented from discovering the alleged newly discovered evidence. Rather, Appellant was aware of the potential federal claims at the time of his criminal prosecution, but elected, upon the advice of counsel, to delay their prosecution until the criminal case was resolved. The claims relied upon by Appellant were known to him during the prosecution of the criminal charges. Furthermore, Appellant has not offered

into the record the settlement agreement at issue. The mere fact a settlement was reached is not conclusive evidence of liability on the part of Midwest Direct. Furthermore, any alleged inconsistency in the statements of Midwest Direct employees in the federal lawsuit would merely serve to impeach or contradict their former testimony in the previous criminal trial.

{¶18} Accordingly, the June 15, 2009 Judgment Entry of the Stark County Court of Common Pleas denying Appellant's motion for a new trial is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHAD R. BALDWIN

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 2009-CA-00186

For the reasons stated in our accompanying Opinion, the June 15, 2009 Judgment Entry of the Stark County Court of Common Pleas denying Appellant's motion for a new trial is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY