

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Noel Gray, Appellant.

Appellate Case No. 2012-213607

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-036
Submitted December 1, 2013 – Filed January 29, 2014

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App.
2011) ("The granting of a new trial because of after-discovered evidence is not
favored, and this court will affirm the trial court's denial of such a motion unless

the trial court abused its discretion." (internal quotation marks omitted)); *id.* ("In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching."); Rule 29(b), SCRCrimP (providing "[a] motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of the actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence").

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.