

<b>STATE V. CAMPBELL</b>
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**STATE OF NEW MEXICO**  
**Plaintiff-Appellant,**  
**v.**  
**LORIE ESTELLE CAMPBELL**  
**Defendant-Appellee.**

No. 33,695

COURT OF APPEALS OF NEW MEXICO

March 10, 2015

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Darren M. Kugler,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Margaret McLean, Assistant Attorney General,  
Santa Fe, NM, for Appellant

Jorge A. Alvarado, Chief Public Defender, Sergio Viscoli, Appellate Defender, Santa Fe,  
NM, for Appellee

**JUDGES**

CYNTHIA A. FRY, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, RODERICK  
KENNEDY, Judge

**AUTHOR:** CYNTHIA A. FRY

**MEMORANDUM OPINION**

**FRY, Judge.**

{1} The State appeals from the district court's order granting Defendant's motion to dismiss the charge of non-residential burglary. [RP 39, 57] Our notice proposed to

affirm, relying on our recently decided opinion *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, October 27, 2014) (holding that “violating an order of no trespass by entering an otherwise open public shopping area with the intent to commit a theft does not constitute the type of harmful entry required for a violation of the burglary statute”), *cert. granted*, 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26, 2015). The State has filed a response, objecting to our notice and requesting that we hold this appeal in abeyance or provide the State with a reasonable opportunity to seek guidance from the New Mexico Supreme Court on all pending appeals controlled by our opinion in *Archuleta*. [Ct.App.File] We have provided the State with such an opportunity, and the Supreme Court has denied the State a stay or other remedy that would suspend the precedential value of *Archuleta*. Thus, we apply *Archuleta*. See Rule 12-405(C) NMRA (“A petition for writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless ordered by the Supreme Court.”).

{2} In its response to our notice, the State objects to our proposed disposition, but indicates that “it is unable to provide any additional facts or other legal argument in response to the proposed disposition.” [Response] Because there are no material factual distinctions to remove this case from the control of our opinion in *Archuleta*, we affirm the district court’s order granting Defendant’s motion to dismiss the charge of non-residential burglary.

**IT IS SO ORDERED.**

**CYNTHIA A. FRY, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Chief Judge**

**RODERICK KENNEDY, Judge**