

<b>STATE V. CUSTER</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellant,  
v.  
**BYRON CUSTER,**  
Defendant-Appellee.

NO. 30,990

COURT OF APPEALS OF NEW MEXICO

March 14, 2011

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY, Grant L. Foutz,  
District Judge

**COUNSEL**

Gary K. King, Attorney General, Andrea Sassa, Assistant Attorney General, Santa Fe,  
NM, for Appellant

Steven F. Seeger, Gallup, NM, for Appellee

**JUDGES**

MICHAEL E. VIGIL, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, TIMOTHY L.  
GARCIA, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Judge.**

The State appeals dismissal of charges against Defendant. In our notice, we proposed to affirm the dismissal. The State has responded that it does not contest our proposal.

Therefore, for the reasons stated in our notice, we affirm.

**IT IS SO ORDERED.**

**MICHAEL E. VIGIL, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**TIMOTHY L. GARCIA, Judge**