

STATE V. LYDIA A.

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
LYDIA A.,
Defendant-Appellee.**

Nos. 32,877 & 32,884 (Consolidated)

COURT OF APPEALS OF NEW MEXICO

March 9, 2014

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Marcie E. Beyer,
District Judge

COUNSEL

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JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
JONATHAN B. SUTIN, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} The State appeals from the district court's order dismissing the charge of burglary brought against the Child. This Court issued a stay before addressing the

merits of the State's appeal, pending our decision in *State v. Archuleta*, ___-NMCA-___, ___ P.3d ___ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-___ (No. 35,005, Jan. 26, 2015), the first of many cases raising the same issue relative to the charge of burglary. Once the opinion in *Archuleta* was issued, we relied on that opinion, lifted the stay, and issued a notice of proposed summary disposition, proposing to affirm. [Ct. App. file]

{2} The State has filed a response objecting to the 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 regarding all pending appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have provided the State with such an opportunity, and the Supreme Court has denied the State's request for a stay or another remedy that would suspend the precedential value of *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*. See Rule 12-405(C) ("A petition for a 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 otherwise ordered by the Supreme Court.").

{3} In its response to our notice, the State simply objects to our proposed disposition and indicates it is unable to provide any additional facts or legal argument in response to the proposed disposition. [MIO 1, 3] We continue to believe there are no material factual or legal distinctions between this case and our opinion in *Archuleta*. Therefore, for the reasons stated in our notice of proposed disposition, we affirm the district court's order granting the Child's motion to dismiss the charge of burglary.

{4} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

JONATHAN B. SUTIN, Judge