

STATE V. TOHSONIE

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
TROY TOHSONIE,
Defendant-Appellee.**

NO. 33,157

COURT OF APPEALS OF NEW MEXICO

March 10, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean Jr.,
District Judge

COUNSEL

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JUDGES

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

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} The State appeals from the district court's order granting Defendant's motion to dismiss the charge of commercial burglary. [RP 53] Our notice proposed to affirm,

relying on our recently decided opinion *State v. Archuleta*, ___-NMCA-___, ___ P.3d ___ (No. 32,794, Oct. 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, red clip] 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 otherwise 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, red clip/2-3] 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 commercial burglary charge.

{3} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

JONATHAN B. SUTIN, Judge