

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

No. 33,710

COURT OF APPEALS OF NEW MEXICO

March 12, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, William C. Birdsall,  
District Judge

**COUNSEL**

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

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, for Appellant

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,  
TIMOTHY L. GARCIA, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant appeals the district court's order denying his motion to dismiss the charge of commercial burglary. Defendant entered a conditional plea reserving for appeal the issues raised in his motion to dismiss. [RP 60] This Court issued a stay

before addressing the merits of the appeal, pending our decision in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-001, \_\_\_ P.3d \_\_\_ (No. 35,005, Jan. 26, 2015), the first of many cases raising the same issue relative to the charge of commercial burglary. On the basis of *Archuleta*, we lifted the stay and issued a notice of proposed summary disposition, proposing to reverse. The State has responded with an objection to our notice and a request to 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*. [MIO 1-2] 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, 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.”).

{2} In its response to our notice, the State simply objects to our proposed disposition without elaboration. [MIO 1, 3] We continue to believe that there are no material factual distinctions to remove this case from the control of our opinion in *Archuleta*. For the reasons stated in our notice, we reverse Defendant’s conviction for commercial burglary.

{3} IT IS SO ORDERED.

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**TIMOTHY L. GARCIA, Judge**