

STATE V. BUCK

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
CASSANDRA BUCK,
Defendant-Appellee.**

No. 35,273

COURT OF APPEALS OF NEW MEXICO

March 22, 2016

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Christina P.
Argyres, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, John Kloss, Assistant Attorney General, Albuquerque, NM, for Appellant

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

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, LINDA M. VANZI, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Here, the State appealed from the district court's order dismissing the State's case with prejudice. Our review of the record indicated that the district court's order of dismissal with prejudice was based on an adjudication of the merits of the State's case

and effected an acquittal. See *State v. Baca*, 2015-NMSC-021, ¶ 32, 352 P.3d 1151. We issued a notice of proposed summary disposition, proposing to dismiss, on grounds that the Double Jeopardy Clause absolutely bars the State from appealing after an acquittal, even where the acquittal is based on “egregiously erroneous” grounds. *State v. Lizzol*, 2007-NMSC-024, ¶ 7, 141 N.M. 705, 160 P.3d 886 (internal quotation marks and citation omitted). The State has responded to our notice, indicating that it will not file a memorandum in opposition based on its concurrence that the district court “truly acquitted Defendant, double jeopardy protections preclude retrial, and dismissal of the State’s appeal is required.” [Response] We continue to believe this is the necessary result.

{2} For the reasons stated in this Opinion and in our notice, we dismiss the State’s appeal.

{3} **IT IS SO ORDERED.**

JONATHAN B. SUTIN, Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

LINDA M. VANZI, Judge