

STATE V. CAMPBELL

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
LORIE ESTELLE CAMPBELL,
Defendant-Appellee.**

NO. 33,128

COURT OF APPEALS OF NEW MEXICO

March 5, 2015

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Darren M. Kugler,
District Judge

COUNSEL

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Jorge A. Alvarado, Chief Public Defender, Sergio Viscoli, Assistant Appellate Defender,
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JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
CYNTHIA A. FRY, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

{1} The State appeals the district court's order granting Lorie Estelle Campbell's (Defendant) motion to dismiss a charge of commercial burglary. 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 commercial burglary. On the basis of that Opinion, we lifted the stay and issued a notice of proposed summary disposition, proposing to affirm on December 4, 2014. 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] 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.

RODERICK T. KENNEDY, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

CYNTHIA A. FRY, Judge