

**STATE V. CUFFEE**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
ELIZABETH CUFFEE,  
Defendant-Appellee.**

NO. 32,797

COURT OF APPEALS OF NEW MEXICO

March 9, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Ross Sanchez,  
District Judge

**COUNSEL**

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

Jorge A. Alvarado, Chief Public Defender, Kimberly Chavez Cook, Assistant Appellate  
Defender, Santa Fe, NM, for Appellee

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, J. MILES  
HANISEE, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

{1} The State appeals from the district court's order dismissing the indictment against Defendant for the charge of commercial burglary. Originally, we issued a notice

of proposed summary disposition, proposing to reverse. Defendant filed a memorandum in opposition to our notice. Thereafter, we issued a stay 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. Relying on our opinion in *Archuleta*, we lifted the stay and issued a second notice, proposing to affirm. The State has filed a response, objecting to our second 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*. [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 second 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 second notice, we affirm the district court’s order granting Defendant’s motion to dismiss the commercial burglary charge.

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

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**TIMOTHY L. GARCIA, Judge**

**J. MILES HANISEE, Judge**