

**STATE V. DAVIDSON**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
TYJUAN DAVIDSON,  
Defendant-Appellee.**

NO. 32,795

COURT OF APPEALS OF NEW MEXICO

March 16, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Michael  
Martinez, 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: JONATHAN B. SUTIN, Judge, M.  
MONICA ZAMORA, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

{1} The State appeals from the district court's order dismissing the charge of commercial burglary brought against Defendant. After first proposing to reverse, this

Court 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. Once the opinion in *Archuleta* was issued, we relied on that opinion, lifted the stay, and issued a second notice of proposed summary disposition, this time proposing to affirm. [Ct. App. file]

**{2}** The State has filed a response objecting to the 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 regarding 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's request for a stay or another 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.").

**{3}** In its response to our notice, the State simply objects to our proposed disposition and indicates it is unable to provide any additional facts or legal argument in response to the proposed disposition. [MIO 1, 3] We continue to believe there are no material factual or legal distinctions between this case and our opinion in *Archuleta*. Therefore, for the reasons stated in our second notice of proposed disposition, we affirm the district court's order granting Defendant's motion to dismiss the charge of commercial burglary.

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

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**M. MONICA ZAMORA, Judge**