

**STATE V. FRANCO**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellant,  
**v.**  
**MARQUIS FRANCO,**  
Defendant-Appellee.

No. 32,346

COURT OF APPEALS OF NEW MEXICO

November 19, 2012

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Freddie J. Romero,  
District Judge

**COUNSEL**

Gary K. King, Attorney General, Margaret E. McLean, Assistant Attorney General, Joel Jacobsen, Assistant Attorney General, Santa Fe, NM, for Appellant

Jacqueline Cooper, Chief Public Defender, Nancy Hewitt, Assistant Appellate Defender, Santa Fe, NM, for Appellee

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, J. MILES HANISEE, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

The State appeals from a district court order suppressing evidence. We issued a calendar notice proposing to affirm. The State has filed a suggestion of death, indicating

that Defendant has died. See Rule 12-301(A) NMRA. The State has also filed a response, indicating it will not be filing a memorandum in opposition. Rule 12-301(A) gives this Court discretion in deciding how to proceed after notification of the death of a party. See *Henry v. Daniel*, 2004-NMCA-016, ¶ 15, 135 N.M. 261, 87 P.3d 541 (discussing this Court's discretion to resolve appeal on the merits following death of a party). In light of the foregoing, this appeal is dismissed as moot.

**IT IS SO ORDERED.**

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**J. MILES HANISEE, Judge**