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## IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

### 2 STATE OF NEW MEXICO,

Plaintiff-Appellant,

4 v.

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NO. 33,128

#### 5 **LORIE ESTELLE CAMPBELL**,

Defendant-Appellee.

# 7 APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY 8 Darren M. Kugler, District Judge

9 Hector H. Balderas, Attorney General

10 Margaret McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellant

13 Jorge A. Alvarado, Chief Public Defender

14 Sergio Viscoli, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellee

#### **MEMORANDUM OPINION**

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1 KENNEDY, Judge.

The State appeals the district court's order granting Lorie Estelle Campbell's 2 **{1}** (Defendant) motion to dismiss a charge of commercial burglary. This Court issued 3 4 a stay before addressing the merits of the State's appeal, pending our decision in *State* 5 v. Archuleta, \_\_\_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_\_ (No. 32,794, Oct. 27, 2014), cert. 6 granted, 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26. 2015), the first of many cases raising the same issue relative to the charge of 7 8 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. 9 The State has responded with an objection to our notice, and a request to hold this 10 appeal in abeyance or provide the State with a reasonable opportunity to seek 11 guidance from the New Mexico Supreme Court on all pending appeals controlled by 12 13 our Opinion in Archuleta. [MIO 1-2] We have provided the State with such an 14 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) 15 16 NMRA, we apply Archuleta. See Rule 12-405(C) ("A petition for a writ of certiorari 17 filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition 18 does not affect the precedential value of an opinion of the Court of Appeals, unless 19 otherwise ordered by the Supreme Court.").

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1	{2} In its response to our notice, the State simply objects to our proposed
2	disposition without elaboration. [MIO 1] We continue to believe that there are no
3	material factual distinctions to remove this case from the control of our Opinion in
4	Archuleta. For the reasons stated in our notice, we reverse Defendant's conviction for
5	commercial burglary.
6	<b>{3} IT IS SO ORDERED.</b>
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8	RODERICK T. KENNEDY, Judge
9	WE CONCUR:
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11	MICHAEL E. VIGIL, Chief Judge
12 13	CYNTHIA A. FRY, Judge
15	CINIIIA A. FRI, Judge