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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,

4 v.

NO. 33,157

5 **TROY TOHSONIE,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **John A. Dean Jr., District Judge**

9 Hector H. Balderas, Attorney General

10 Margaret E. 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

17 **MEMORANDUM OPINION**

18 **VIGIL, Judge.**

1 {1} The State appeals from the district court’s order granting Defendant’s motion
2 to dismiss the charge of commercial burglary. [RP 53] Our notice proposed to affirm,
3 relying on our recently decided opinion *State v. Archuleta*, ___-NMCA-___, ___ P.3d
4 ___ (No. 32,794, Oct. 27, 2014) (holding that “violating an order of no trespass by
5 entering an otherwise open public shopping area with the intent to commit a theft does
6 not constitute the type of harmful entry required for a violation of the burglary
7 statute”), *cert. granted*, 2015-NMCERT-___ (No. 35,005, Jan. 26, 2015). The State
8 has filed a response, objecting to our notice and requesting that we hold this appeal
9 in abeyance or provide the State with a reasonable opportunity to seek guidance from
10 the New Mexico Supreme Court on all pending appeals controlled by our opinion in
11 *Archuleta*. [Ct.App.File, red clip] We have provided the State with such an
12 opportunity, and the Supreme Court has denied the State a stay or other remedy that
13 would suspend the precedential value of *Archuleta*. Thus, we apply *Archuleta*. *See*
14 Rule 12-405(C) NMRA (“A petition for writ of certiorari filed pursuant to Rule 12-
15 502 NMRA or a Supreme Court order granting the petition does not affect the
16 precedential value of an opinion of the Court of Appeals, unless otherwise ordered by
17 the Supreme Court.”).

18 {2} In its response to our notice, the State objects to our proposed disposition, but
19 indicates that it “is unable to provide any additional facts or other legal argument in

1 response to the proposed disposition.” [response, red clip/2-3] Because there are no
2 material factual distinctions to remove this case from the control of our opinion in
3 *Archuleta*, we affirm the district court’s order granting Defendant’s motion to dismiss
4 the commercial burglary charge.

5 {3} **IT IS SO ORDERED.**

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7

MICHAEL E. VIGIL, Chief Judge

8 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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JONATHAN B. SUTIN, Judge