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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. 33,695
5	LORIE ESTELLE CAMPBELL
6	Defendant-Appellee.
	APPEAL FROM THE DISTRICT COURT OF DON~A ANA COUNTY Darren M. Kugler, District Judge
10	Hector H. Balderas, Attorney General Margaret McLean, Assistant Attorney General Santa Fe, NM
12	for Appellant
14	Jorge A. Alvarado, Chief Public Defender Sergio Viscoli, Appellate Defender Santa Fe, NM
16	for Appellee
17	MEMORANDUM OPINION
18	FRY, Judge.

The State appeals from the district court's order granting Defendant's motion to dismiss the charge of non-residential burglary. [RP 39, 57] Our notice proposed to affirm, relying on our recently decided opinion State v. Archuleta, \_\_\_\_-NMCA-\_ P.3d \_\_\_\_ (No. 32,794, October 27, 2014) (holding that "violating an order of no trespass by entering an otherwise open public shopping area with the intent to commit a theft does not constitute the type of harmful entry required for a violation of the burglary statute"), cert. granted, 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26, 2015). The State has filed a response, objecting to our notice and requesting that we hold this appeal in abeyance or provide the State with a reasonable opportunity to seek 10 guidance from the New Mexico Supreme Court on all pending appeals controlled by our opinion in Archuleta. [Ct.App.File] We have provided the State with such an 11 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 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 ordered by the 17 Supreme Court.").

1	In its response to our notice, the State objects to our proposed disposition, but
2	indicates that "it is unable to provide any additional facts or other legal argument in
3	response to the proposed disposition." [Response] Because there are no material
4	factual distinctions to remove this case from the control of our opinion in <i>Archuleta</i> ,
5	we affirm the district court's order granting Defendant's motion to dismiss the charge
6	of non-residential burglary.
7	IT IS SO ORDERED.
8	
9	CYNTHIA A. FRY, Judge
10	WE CONCUR:
1.1	
11 12	MICHAEL E. VIGIL, Chief Judge
1.0	
13 14	RODERICK KENNEDY, Judge