



1 {1} The State appeals from the district court’s order granting Defendant’s motion  
2 to dismiss the charge of non-residential burglary. [RP 39, 57] Our notice proposed  
3 to affirm, relying on our recently decided opinion *State v. Archuleta*, \_\_\_-NMCA-\_\_\_,  
4 \_\_\_ P.3d \_\_\_ (No. 32,794, October 27, 2014) (holding that “violating an order of no  
5 trespass by entering an otherwise open public shopping area with the intent to commit  
6 a theft does not constitute the type of harmful entry required for a violation of the  
7 burglary statute”), *cert. granted*, 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26, 2015).  
8 The State has filed a response, objecting to our notice and requesting that we hold this  
9 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  
11 our opinion in *Archuleta*. [Ct.App.File] 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 ordered by the  
17 Supreme Court.”).

1 {2} 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 *Archuleta*,  
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.**

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CYNTHIA A. FRY, Judge

10 **WE CONCUR:**

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MICHAEL E. VIGIL, Chief Judge

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RODERICK KENNEDY, Judge