



1 **BUSTAMANTE, Judge.**

2 {1} Defendant appeals from the district court’s order denying his motion to dismiss  
3 the charge of commercial burglary. Defendant entered a conditional plea reserving for  
4 appeal the issues raised in his motion to dismiss. [RP 98-99] This Court issued a  
5 calendar notice proposing to reverse based on our decision in *State v. Archuleta*, \_\_\_-  
6 NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*,  
7 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*. [MIO 1-3] We have provided the State with such an opportunity, and the  
12 Supreme Court has denied the State a stay or other remedy that would suspend the  
13 precedential value of *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply  
14 *Archuleta*. See Rule 12-405(C) (“A petition for a writ of certiorari filed pursuant to  
15 Rule 12-502 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 simply objects to our proposed  
19 disposition without elaboration. [MIO 1, 3] We continue to believe that there are no

1 material factual distinctions to remove this case from the control of our opinion in  
2 *Archuleta*. For the reasons stated in our notice, we reverse Defendant's conviction for  
3 commercial burglary.

4 {3} **IT IS SO ORDERED.**

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**MICHAEL D. BUSTAMANTE, Judge**

8 **WE CONCUR:**

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10 **JAMES J. WECHSLER, Judge**

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12 **LINDA M. VANZI, Judge**