

**STATE V. GARZA**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
RAUL RALPH GARZA,  
Defendant-Appellee.**

NO. 34,072

COURT OF APPEALS OF NEW MEXICO

March 11, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Charles W.  
Brown, District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Margaret McLean, Assistant Attorney General,  
Santa Fe, NM, for Appellant

Jorge A. Alvarado, Chief Public Defender, Sergio Viscoli, Appellate Defender, Santa Fe,  
NM, for Appellee

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, TIMOTHY L.  
GARCIA, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

{1} The State appeals from the district court's order granting Defendant's motion to dismiss the charge of commercial burglary. This Court issued a calendar notice

proposing to affirm based on our decision in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *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 guidance from the New Mexico Supreme Court on all pending appeals controlled by our opinion in *Archuleta*. [MIO 1-3] We have provided the State with such an 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) NMRA, we apply *Archuleta*. See Rule 12-405(C) (“A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

{2} In its response to our notice, the State simply objects to our proposed disposition without elaboration. [MIO 1] We continue to believe that there are no material factual distinctions to remove this case from the control of our opinion in *Archuleta*. For the reasons stated in our notice, we affirm the district court’s order granting Defendant’s motion to dismiss the commercial burglary charge.

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

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**CYNTHIA A. FRY, Judge**

**TIMOTHY L. GARCIA, Judge**