

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

STATE OF ARIZONA, *Appellee*,

*v.*

JULIAN ROSENDO NORIEGA, *Appellant*.

No. 1 CA-CR 13-0053

FILED 11-26-2013

---

Appeal from the Superior Court in Maricopa County

No. CR2009-179524-001

The Honorable Janet E. Barton, Judge

**CONVICTIONS AFFIRMED; JUDGMENT AFFIRMED AS MODIFIED**

---

COUNSEL

Arizona Attorney General's Office, Phoenix  
By Michael T. O'Toole

*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Thomas K. Baird

*Counsel for Appellant*

STATE v. NORIEGA  
Decision of the Court

---

**MEMORANDUM DECISION**

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Kenton D. Jones and Judge Kent E. Cattani joined.

---

**J O H N S E N**, Judge:

¶1 Julian Rosendo Noriega was convicted of first-degree murder and kidnapping, Class 1 and Class 2 dangerous felonies, respectively. The superior court sentenced Noriega to natural life incarceration for the murder and 15 years' incarceration for the kidnapping, the sentences to be served concurrently. The court also ordered him to "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing in accordance with [Arizona Revised Statutes ("A.R.S.")] § 13-610."

¶2 On appeal, Noriega does not dispute his convictions nor the terms of incarceration the superior court imposed. He argues only that the court erred by ordering him to pay for DNA testing pursuant to A.R.S. § 13-610 (2013).<sup>1</sup> The State confesses error, acknowledging that in *State v. Reyes*, 232 Ariz. 468, 472, ¶ 14, 307 P.3d 35, 39 (App. 2013), this court held that A.R.S. § 13-610 does not authorize the court to impose a DNA collection fee on a convicted defendant. We agree that pursuant to *Reyes*, which was issued after Noriega was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to omit the requirement that Noriega pay the cost of DNA testing.



Ruth A. Willingham · Clerk of the Court  
FILED: mjt

---

<sup>1</sup> Absent material revision after the alleged offense, we cite a statute's current version.