

NOTICE: NOT FOR PUBLICATION.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.

BRITTANY WATERS, *Appellant*.

No. 1 CA-CR 13-0284

FILED 12-3-2013

Appeal from the Superior Court in Maricopa County

No. CR2011-006960-001

The Honorable Pamela Hearn Svoboda, Judge

CONVICTION 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 Stephen J. Whelihan

Counsel for Appellant

STATE v. WATERS
Decision of the Court

MEMORANDUM DECISION

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Margaret H. Downie and Judge John C. Gemmill joined.

J O H N S E N, Judge:

¶1 Brittany Waters was convicted of aggravated assault, a Class 3 dangerous felony, and sentenced to five years' incarceration. The superior court also ordered her 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, Waters does not dispute her conviction nor the term of incarceration the superior court imposed. She argues only that the court erred by ordering her to pay for DNA testing pursuant to A.R.S. § 13-610 (2013).¹ 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 Waters was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to omit the requirement that Waters pay the cost of DNA testing.



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

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