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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



DIVISION ONE  
FILED: 06/27/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

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

STATE OF ARIZONA, ) 1 CA-CR 12-0446  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
TYLER WILIAM FETTERHOFF, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)

Appeal from the Superior Court in Yavapai County

Cause No. V1300CR201180102

The Honorable Michael R. Bluff, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
by Joseph T. Maziarz, Chief Counsel,  
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and Andrew Reilly, Assistant Attorney General  
Attorneys for Appellee

C. Kenneth Ray II, P.C. Prescott  
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G E M M I L L, Judge

¶1 Defendant, Tyler William Fetterhoff, appeals from the trial court's findings of dangerousness and aggravating circumstances relevant to his convictions and sentences on two

counts of aggravated assault, each a Class 3 dangerous felony, and two counts of misdemeanor DUI. He raises the following arguments on appeal: (1) the trial court erred in permitting the state to present medical evidence concerning the victims' injuries; (2) the trial court erred in finding Defendant's vehicle was a "dangerous instrument" for purposes of the aggravated assault charges; (3) the trial court erred in denying defendant's motion for judgment of acquittal and subsequent motion for new trial; and (4) the trial court improperly retained jurisdiction over Defendant's case for the purpose of determining restitution. For the following reasons, we affirm the trial court's judgments and sentences.

#### **FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

¶2 The State charged Defendant with Count I, aggravated assault of Jerri Lynn H.,<sup>2</sup> a Class 3 dangerous felony; Count II, aggravated assault of Carmelita H., a Class 3 dangerous felony; Count III, extreme driving under the influence, with a blood alcohol level ("BAC") of 0.20 or more within two hours of

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<sup>1</sup> We view the facts in the light most favorable to sustaining the verdicts and resolve all reasonable inferences against Defendant. *State v. Vandever*, 211 Ariz. 206, 207 n.2, 119 P.3d 473, 474 n.2 (App. 2005).

<sup>2</sup> We use the first initial of the victims' last names to protect their privacy as victims. *State v. Maldonado*, 206 Ariz. 339, 341 n.1, ¶ 2, 78 P.3d 1060, 1062 n.1 (App. 2003).

driving, a Class 1 misdemeanor; Count IV,<sup>3</sup> driving under the influence with a blood alcohol level of 0.08 or more within two hours of driving, a Class 1 misdemeanor; and Count 5, driving while under the influence of intoxicating liquor and impaired to the slightest degree, a Class 1 misdemeanor. The charges arise out of an incident that occurred in February 2011 when Defendant, who was driving with a BAC of 0.278, drove his vehicle into the rear of the victims' Chevy Trailblazer while both vehicles were travelling southbound on Interstate 17.

¶13 Prior to trial, the State filed an "Allegation of Dangerousness" alleging that the aggravated assault offenses involved the use of a deadly weapon or dangerous instrument, a car, as well as an "Allegation of Aggravating Circumstances," alleging the following aggravating circumstances: (1) the infliction or threatened infliction of serious physical injury; (2) the use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime; (3) the value of the property taken or damaged; and (4) the physical, emotional, or financial harm suffered by the victims.

¶14 Defendant entered into a stipulated agreement with the State in which he agreed to plead guilty to the charges (Counts I, II, III, and V) while preserving his right to contest the

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<sup>3</sup> The State dismissed this charge at the change of plea hearing.

State's allegations of dangerousness and aggravating factors. With regard to the allegation of dangerousness, he stipulated that the State "may present evidence in a trial to a jury or to the Court" regarding (1) his "alcohol impairment, blood and breath alcohol levels, retrograde of alcohol levels to the time of the accident, and the universal blood alcohol level of impairment," and (2) "the nature, extent and seriousness of the injuries suffered by the victims." Defendant also signed a waiver of a jury trial.

¶15 At a hearing in January 2012, the trial court accepted the stipulated agreement, Defendant's guilty plea, and Defendant's waiver of jury trial, and set the matter for a bench trial on the dangerousness and aggravating circumstances allegations. At the conclusion of a three-day trial during which the trial court accepted evidence and heard testimony, the court directed defense counsel and the prosecutor to file memoranda of law regarding the issue of dangerousness and took matters under advisement. On May 4, 2012, the trial court issued its ruling finding the State had proven its allegation of the dangerousness of the aggravated assault charges "either by the use of the Defendant's vehicle [as a deadly instrument] or [Defendant's] intentional or knowing infliction of serious physical injury. . ." It also found the State had proven two aggravating circumstances: (1) Defendant's actions caused

significant property damage to the victims' vehicle and (2) each victim suffered significant emotional harm. The court specifically stated it did not find the infliction of serious physical injury to be an aggravating factor.

¶16 On July 9, 2012, the trial court sentenced Defendant to concurrent, slightly mitigated terms of 6.5 years in prison on each of the aggravated assault charges as Class 3 dangerous felonies (Counts I and II) and to concurrent, six-month jail terms for the misdemeanor DUI offenses with credit for six months served. Defendant timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (1992), 13-4031 and 13-4033 (2010).

## **DISCUSSION**

### *Erroneous Admission of Medical Evidence*

¶17 On the first day of the bench trial, Defendant immediately raised a "standing objection" to the presentation of "any and all medical testimony and any and all testimony concerning physical injury," arguing it was "not relevant in connection with the allegation of dangerousness" or to the aggravating circumstances. The State responded that Defendant had waived this issue by specifically stipulating in his agreement that the State could present evidence "on the issue . . . of the nature, extent and seriousness of the injuries

suffered by the victims." The trial court "overruled" Defendant's objection finding the evidence was relevant and its admission was "clearly covered by the stipulation." The State presented evidence from five physicians who treated the two victims for the injuries they sustained as a result of the collision.

¶8 On appeal, Defendant maintains the trial court erred in permitting the State to present the medical evidence because its admission was barred by A.R.S. § 13-701(D)(1), which does not permit the "infliction of serious physical injury" to be used as an aggravating circumstance when "serious physical injury" is an element of the underlying offense. This argument is inapposite under the circumstances of this case.

¶9 We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *State v. Aguilar*, 209 Ariz. 40, 49, ¶ 29, 97 P.3d 865, 874 (2004). Absent a clear abuse of that discretion, we will not second guess a trial court's ruling on either the admissibility or relevance of evidence. *State v. Spreitz*, 190 Ariz. 129, 146, 945 P.2d 1260, 1277 (1997).

¶10 All relevant evidence is admissible unless it is specifically precluded by an applicable rule or statute. Ariz. R. Evid. 402; *State v. Rivera*, 152 Ariz. 507, 517-18, 733 P.2d 1090, 1100-01 (1987). "Relevant evidence" is evidence that has

"any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401. Furthermore, relevant evidence may be admissible for one purpose even if it would be inadmissible for another purpose. *State v. Nichols*, 219 Ariz. 170, 175, ¶ 14, 195 P.3d 207, 212 (App. 2008).

¶11 First, the record clearly shows the Defendant stipulated to the State's presentation of evidence concerning "the nature, extent and seriousness" of the victims' injuries as part of his plea agreement. Therefore, Defendant waived any objection to admission of the evidence and cannot now claim error on the trial court's part on appeal. See *State v. Virgo*, 190 Ariz. 349, 353, 947 P.2d 923, 927 (App. 1997) (stipulations binding on parties and criminal defendant may not withhold a stipulation concerning an offense element from jury's consideration).

¶12 Second, the trial court did not use the evidence of serious physical injury to improperly aggravate Defendant's sentences, as barred by A.R.S. §13-701(D)(1). The trial court specifically stated it did not find the infliction of serious physical injury as an "aggravating factor" for purposes of sentencing in this case. Even assuming the trial court considered the extent of the victims' injuries when reaching its

conclusion that the victims suffered "significant emotional harm," it committed no reversible error. Despite the fact that the trial court found two other aggravating factors, it nonetheless imposed "slightly mitigated" sentences for each of the aggravated assault offenses. The sentences imposed were one year less than the presumptive sentences authorized by A.R.S. § 13-704(A) for Class 3 dangerous offenses.<sup>4</sup> Because the trial court's consideration of that factor did not result in the imposition of sentences above that which the court was entitled to impose, the trial court committed no error. *State v. Miranda-Cabrera*, 209 Ariz. 220, 227, ¶¶ 31-32, 99 P.3d 35, 42 (App. 2004) (improper consideration at sentencing of aggravating factors not found by jury did not violate 6th Amendment where actual sentence imposed was not above presumptive sentence).

¶13 Accordingly, we conclude the trial court did not abuse its discretion in admitting the medical evidence of the victims' injuries in this case, and further, any such potential error was harmless in any event.

*Vehicle as "Dangerous Instrument"*

¶14 Defendant maintains that the trial court erred when it found the vehicle he was operating was a "dangerous instrument"

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<sup>4</sup> At sentencing, the trial court specified that the "dangerous range" of sentencing for the aggravated assault offenses derived from its determination that the offenses were dangerous "based on the vehicle."



for sentence enhancement purposes because the State presented no evidence that showed he "wielded the vehicle as a weapon" or the vehicle "caused any greater injury than would have occurred if he had not been impaired." We disagree.

¶15 The issue of whether Defendant's vehicle was a "dangerous instrument" is a mixed question of law and fact. *See, e.g., State v. Gordon*, 161 Ariz. 308, 310, 778 P.2d 1204, 1206 (1989) (if object not inherently dangerous as matter of law, trier of fact may determine if defendant used object in manner that meets statutory definition of dangerous instrument or deadly weapon). "We deferentially review questions of fact but review questions of statutory interpretation and legal determinations *de novo*." *In re Robert A.*, 199 Ariz. 485, 487, ¶ 4, 19 P.3d 626, 628 (App. 2001).

¶16 As noted above, a "dangerous instrument" is "anything that under the circumstances in which it is used . . . is readily capable of causing death or serious physical injury." A.R.S. § 13-105(12). A "dangerous offense" is one that involves "the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person." A.R.S. § 13-105(13) (emphasis added). It is well established that the legislature "specifically meant to require that the infliction of serious physical injury had to be done intentionally or

knowingly, but for the use of a dangerous instrument these mental states were not required." *State v. Tamplin*, 146 Ariz. 377, 380, 706 P.2d 389, 392 (App. 1985). That is because the legislature has determined "that one who uses a dangerous instrument is more culpable than one who causes injury without intention or knowledge." *Id.* Thus, Defendant's contentions that the State made no showing that he intended to use his vehicle as a dangerous instrument or that he "targeted" the victims' vehicle serve no purpose. The "intentional or knowing" components simply do not apply to the "use of a dangerous instrument." *Id.*

¶17 Defendant relies on *State v. Orduno*, 159 Ariz. 564, 769 P.2d 1010 (1989), to argue that the trial court was prohibited from basing its "dangerousness" determination on its finding his motor vehicle was a "dangerous instrument" for sentence enhancement purposes under A.R.S. § 13-704. His reliance is misplaced. In *Orduno*, our supreme court held that the trier of fact may not consider whether or not a vehicle is a dangerous instrument for enhancement purposes for a DUI offense because driving a motor vehicle is necessarily an element of the DUI offense and all DUI offenses are inherently "dangerous" offenses. 159 Ariz. at 566, 769 P.2d at 1012. However, the court limited its holding specifically to a motor vehicle in DUI cases. *Id.* at 567, 769 P.2d at 1013; see also, *State v. Lara*,

171 Ariz. 282, 285, 830 P.2d 806 (1992) ("*Orduno's* application is limited to DUIs."). The *Orduno* court recognized that, while a motor vehicle may not in all circumstances be considered a dangerous instrument for enhancement purposes, it may be used to enhance punishment in those instances in which the motor vehicle is used as a dangerous instrument and is not also an element of the underlying offense. *Orduno*, 159 Ariz. at 566, 769 P.2d at 1012. Furthermore, a defendant need not intend to use a vehicle as a dangerous weapon or deadly instrument in order to warrant enhancement; even when used recklessly, an automobile driven by an intoxicated person at a high rate of speed may trigger the use of the enhanced punishment provisions. See, e.g., *State v. Venegas*, 137 Ariz. 171, 175, 669 P.2d 604, 608 (App. 1983) (stating that a motor vehicle driven at high speed by an intoxicated person in a densely populated area qualifies as dangerous instrument to enhance sentence for negligent homicide).

¶18 Contrary to Defendant's claim that this was essentially a DUI case, the dangerousness allegation here was used only to enhance the sentences for the aggravated assault offenses. *Orduno* does not bar the court from considering it for that purpose. Furthermore, the trial court did not err in finding that Defendant's use of his motor vehicle rendered it a "dangerous instrument." The evidence showed he drove his car

while extremely intoxicated, at a high rate of speed, at dusk, on a winding and well-travelled interstate highway. After running his vehicle into the back of the victims' vehicle causing it to roll over several times, Defendant had no idea what had happened and asked if he had been struck by someone. Under these circumstances, it is clear that Defendant used his vehicle in a manner that was "readily capable of causing death or serious physical injury." A.R.S. § 13-105(12).

*Denial of Motions for Judgment of Acquittal and for New Trial*

¶19 After the State rested, Defendant made an oral motion for a judgment of acquittal, arguing that *Orduno* barred consideration of his motor vehicle for enhancement purposes because "everything about this case [was] in the DUI context;" that no reports established he had been "erratically driving" prior to the collision; and that the fact that no witness could definitively testify about whether the victims' tail lights were functional raised issues of "causation and whether there was an intervening event" that caused the collision. At the court's request, Defendant filed a memorandum setting out his arguments with regards to the allegations of dangerousness and aggravating circumstances. On May 7, 2012, the trial court issued an extensive "Under Advisement Ruling" setting out its finding that the State had proven both its allegation of dangerousness and the two aggravating factors. Defendant then filed a Motion for

Judgment of Acquittal "upon all Sentence-enhancement allegations made by the State," that the trial court denied. On that same day, Defendant also filed a Motion for New Trial in which he argued that the verdict was contrary to the law and the weight of the evidence, that the court considered evidence not properly admitted, and that it erred in its decision as a matter of law. The trial court denied both motions. On appeal, Defendant argues this was error.

¶20 A conviction will be reversed for insufficient evidence only if it is not supported by substantial evidence. *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (internal citations omitted). Direct and circumstantial evidence have equal probative worth, *State v. Pettit*, 194 Ariz. 192, 197, ¶ 23, 979 P.2d 5, 10 (App. 1998), and if reasonable minds could differ on the inferences to be drawn from the evidence, the trial court has no discretion to enter a judgment of acquittal but must allow the matter to proceed. *State v. Cifelli*, 214 Ariz. 524, 527, ¶ 11, 155 P.3d 363, 366 (App. 2007).

¶21 “[The] question of sufficiency of the evidence is one of law, subject to de novo review on appeal.” *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). The relevant question is whether, after viewing the evidence in the light most favorable to sustaining the verdict, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at ¶ 16. “Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.” *State v. Sharma*, 216 Ariz. 292, 294, ¶ 7, 165 P.3d 693, 695 (App. 2007). The trial court did not abuse its discretion in denying the Defendant’s Rule 20 and post-trial motion for judgment of acquittal in this case.

¶22 Insofar as Defendant’s *Orduno*-related admissibility and “intentionality” arguments are concerned, we do not readdress them here, having addressed them above. The question for the trial court here was whether, “under the circumstances in which it [was] used” by Defendant in this case, Defendant’s vehicle was “readily capable of causing death or serious physical injury.” A.R.S. § 13-105(12). If the court made the correct determination that the vehicle, as used, was a dangerous instrument, then the underlying offense was properly subject to sentencing as a dangerous offense. *See State v. Caldera*, 141 Ariz. 634, 637-38, 688 P.2d 642, 645-46 (1984).

¶123 In *Venegas*, this court found that "an automobile . . . when it is driven by an intoxicated person at a high rate of speed in a densely populated area" qualified as a "dangerous instrument" for sentence enhancement. 137 Ariz. at 175, 669 P.2d at 608. Here, Defendant was driving his vehicle southbound on Interstate 17 when he crashed into the rear of the victims' Chevy Trailblazer while it was also travelling southbound in the right-hand lane of the highway. At the time of the collision, Defendant's BAC was 0.278, more than three times the legal limit. At the time of impact, Defendant's vehicle was travelling at a "minimum" speed of 67-72 m.p.h. and the victim's SUV was travelling in the same direction at approximately 63 m.p.h. Defendant's vehicle hit the rear right of the victim's vehicle with sufficient force to cause it to rotate counter-clockwise, roll over several times, break through a guardrail, and ultimately come to rest with the guardrail piercing the SUV's cab.

¶124 Jerri, the driver of the Trailblazer testified that several cars passed her vehicle and that she passed several vehicles as well, and that she became concerned when she saw in her rear view mirror Defendant's vehicle coming "faster and faster," "over the hills" and then "down the hill," in her lane of travel, without appearing to slow down or preparing to "go around" her. She tapped the brake lights on the Trailblazer to

give Defendant notice that she was there, but Defendant's vehicle "slammed really hard" into her vehicle. As a result of the collision, the victims sustained potentially life-threatening injuries as well as permanent impairment. This evidence alone is sufficient to sustain the trial court's finding that Defendant used his vehicle in this case in a manner that was "readily capable of causing death or serious physical injury." A.R.S. § 13-105(12). The trial court therefore did not err in finding the vehicle was a dangerous instrument and the aggravated assaults were dangerous offenses.

¶125 Defendant argues the trial court improperly used the fact that Defendant had a prior citation for DUI when reaching its conclusion. The trial court's under advisement ruling notes Defendant has "a history of alcohol use" as well as "[t]his was his second citation for a DUI within a month." Defendant testified at trial that he had been drinking for eight years and drank to excess "at times" over that period of time. On cross-examination, the State asked Defendant if he had been cited for DUI a week prior to the accident, and the court sustained defense counsel's objection to the question. Given Defendant's admissions about drinking and evidence of his 0.278 BAC at the time of driving, any error in mentioning Defendant's prior DUI was harmless. See *State v. Vild*, 155 Ariz. 374, 379, 756 P.2d 1304, 1309 (App. 1987) (stating that prosecutor's improper



reference to defendant's silence was harmless given the weight of incriminating evidence).

¶126 The trial court's ruling also notes that "[p]rior to the collision, the Defendant was driving erratically and travelling at an excessive rate of speed and weaving in and out of traffic." Defendant maintains the evidence established he was driving "at or below the posted speed limit of 75 mph" and no witness made any reference to "erratic driving" or "weaving in and out of traffic." Regardless of the posted speed limit, the evidence supports the trial court's reasonable inference that a vehicle that collides with the rear end of another vehicle while travelling at a "minimum" speed of 67-72 m.p.h. was travelling at "an excessive rate of speed," and that someone who manages to drive a vehicle into the rear of another vehicle while both vehicles are travelling at over 60 m.p.h. may be considered to have been driving "erratically."

¶127 At trial, Defendant focused at length on the fact that none of the officers had documented whether or not the Trailblazer's tail lights were functioning at the scene of the accident or had inquired whether or not the lights were functioning as part of the subsequent accident investigation. Defendant testified he did not recall seeing tail lights on the victims' vehicle immediately before the crash. As part of his Rule 20 argument to the court, Defendant argued non-working tail

lights would be a "superseding or intervening event" that was the cause of the accident and not Defendant's intoxicated driving. The trial court's under advisement ruling specifically notes the court "found insufficient evidence establishing that the tail lights on the victim's vehicle were inoperable." On appeal, Defendant argues this finding was contrary to the evidence.

¶128 This issue is irrelevant to the trial court's finding of dangerousness, which is based on the question of whether Defendant was operating his vehicle in a manner that, under the circumstances, made it "readily capable of causing death or serious physical injury." In any event, Jerri testified that when she tapped her brake lights she saw that they lit up. In light of her testimony, and despite Defendant's recollection, the trial court did not abuse its discretion in concluding there was insufficient evidence that the tail lights were actually inoperable prior to the collision.

¶129 Finally, Defendant notes the trial court's statement in its advisory ruling that "Defendant himself stipulated to a bench trial" and reads into it the court's suggestion or implication "that the Defendant is to be faulted for having exercised that right." In its entirety, the statement reads: "Defendant himself stipulated to a bench trial on the issue of the dangerousness allegation which necessarily involves a

factual finding as to whether the aggravated assault counts involve the use of a dangerous instrument or the intentional or knowing infliction of serious physical injury." The statement is nothing more than the trial court's delineation of the task before it for the parties' benefit.

¶30 Our de novo review of the record confirms the trial court properly denied Defendant's Rule 20 and judgment of acquittal motions. *West*, 226 Ariz. at 562, ¶ 15, 250 P.3d at 1191. For similar reasons, the trial court also did not abuse its discretion in denying Defendant's motion for new trial. Ariz. R. Crim. P. 24.1; see *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984) ("A denial of a motion for new trial will be reversed only when there is an affirmative showing that the trial court abused its discretion and acted arbitrarily.").

#### *Retention of Jurisdiction Over Restitution*

¶31 At sentencing on the charges, over Defendant's objection, the trial court announced it was retaining jurisdiction to order restitution "upon the submission of the Victims' Statement of Financial Loss." It appears from the record the trial court was aware the victims might be facing continuing treatments at the time of sentencing, and the victims' written sentencing statements indicated there were still outstanding issues regarding insurance coverage and payments for medical debts.

¶132 On appeal, Defendant reiterates the argument he made to the trial court. He contends A.R.S. § 13-805(A) provides that the trial court may retain jurisdiction only over “the manner in which court-ordered payments are made” but that it does not permit the court to retain jurisdiction after sentencing for the purpose of making an initial determination about the amount of restitution required.

¶133 Defendant pled guilty to the offenses before the trial court and was sentenced pursuant to that plea. “In non-capital cases, a Defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation.” A.R.S. § 13-4033(B). A defendant that pleads guilty to an offense waives his right to a direct appeal and may only seek relief by filing a petition for post-conviction relief pursuant to Arizona Rule of Criminal Procedure 32. *State v. Smith*, 184 Ariz. 456, 458, 910 P.2d 1, 3 (1996). A restitution order that is part of a sentence imposed pursuant to a plea agreement also falls within the purview of A.R.S. § 13-4033(B) and must also be challenged via post-conviction proceedings. *See Hoffman v. Chandler ex rel. County of Pima*, 231 Ariz. 362, 364, ¶ 9, 295 P.3d 939, 941 (2013) (considering even post-judgment order of restitution contemplated by plea agreement but entered after entry of judgment to be part of plea agreement sentence for § 13-4033(B) purposes).

¶134 There is no question restitution was ordered pursuant to Defendant's pleading to the charges in this case and not as a consequence of the bench trial on the allegations of dangerousness and aggravating circumstances. Defendant does not suggest otherwise on appeal or make any contrary showing. Nor does defendant contest the trial court's right to impose restitution as part of his plea agreement. This issue is not properly raised before us on direct appeal, and we decline to address it. A.R.S. § 13-4022(B).

**CONCLUSION**

¶135 For the foregoing reasons, we affirm the trial court's judgments and the consequent sentences imposed.

/s/

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JOHN C. GEMMILL, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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MICHAEL J. BROWN, Judge