NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2008-0362
Appellee,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
WAYNE EVANS COATES,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CR-08-042

Honorable James A. Soto, Judge

AFFIRMED

George E. Silva, Santa Cruz County Attorney
By Jose A. Vazquez — Nogales
Attorneys for Appellee

John D. Kaufmann — Tucson
Attorney for Appellant

E S P I N O S A, Presiding Judge.

¶1 After a bench trial, Wayne Coates was convicted of disorderly conduct. He was placed on unsupervised probation for one year and ordered to complete anger management courses as well as forty hours of community service. He challenges his conviction on a number of grounds. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the conviction. *State v. Dixon*, 216 Ariz. 18, ¶ 10, 162 P.3d 657, 660 (App. 2007). One morning in September 2007, Coates was jogging on the side of a private dirt road in Elgin when he saw his neighbor, S., riding his horse towards him on the same side of the road. Neither man yielded to the other and Coates "r[an] into the face of [S.'s] horse." S. then turned his horse towards Coates in an attempt to calm it, at which point Coates began shouting at S. and shoving the horse's head and neck. Afraid his horse would become "spooked" and cause an accident, S. swung the reins at Coates, striking him twice on the shoulder, and yelled at him, warning him not to "try to spook [his] horse again." S. began to ride away and Coates ran alongside S. shouting at him and taking pictures on his cellular telephone.

¶3 In January 2008, Coates was arrested and charged with two counts of aggravated harassment based on two other, unrelated incidents. A charge of disorderly conduct stemming from Coates's encounter with S. in September was later added to the indictment and he was tried on the three charges together. He was acquitted of both aggravated harassment charges but convicted of disorderly conduct as noted above.

Discussion

Sufficiency of the Evidence

¶4 Coates first argues his conviction was not supported by sufficient evidence. We review the evidence presented at trial to determine whether it substantially supported the verdict, viewing the facts in the light most favorable to sustaining the conviction and resolving all reasonable inferences against Coates. *See State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 913-14 (2005). "A judgment of acquittal is appropriate when 'no substantial evidence [exists] to warrant a conviction.'" *State v. Nunez*, 167 Ariz. 272, 278, 806 P.2d 861, 867 (1991), *quoting State v. Clabourne*, 142 Ariz. 335, 345, 690 P.2d 54, 64 (1984) (alteration in *Nunez*). Evidence is "substantial" when it is more than a mere scintilla and is proof that reasonable persons could accept as convincing beyond a reasonable doubt. *Id*.

¶5 To find Coates guilty of disorderly conduct, the court was required to find that he "[e]ngage[d] in fighting, violent or seriously disruptive behavior," with the intent to disturb S.'s peace. A.R.S. § 13-2904(A)(1); *see also State v. Burdick*, 211 Ariz. 583, ¶ 8, 125 P.3d 1039, 1041 (App. 2005) (intent necessary element of disturbing the peace).[1] On appeal, Coates does not dispute that he touched S.'s horse, but argues "there [was] insufficient evidence to show any intent or knowledge of disturbing the peace."

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[1]Coates cites *State v. Burdick*, 209 Ariz. 452, 104 P.3d 183 (App. 2005), in his opening brief. But that decision was subsequently vacated and replaced with the opinion cited herein. *See Burdick*, 211 Ariz. 583, ¶ 1, 125 P.3d at 1040.

¶6 The trier of fact may infer a defendant's intent based on circumstantial evidence. *See State v. Clark*, 143 Ariz. 332, 334-35, 693 P.2d 987, 989-90 (App. 1984); *State v. Rood*, 11 Ariz. App. 102, 104, 462 P.2d 399, 401 (1969) (criminal intent usually proven by circumstantial evidence). Coates testified he was familiar with horses and their behavior, having been around them most of his life, and he knew horses could become "spooked" and throw their riders if disturbed. Other evidence showed that, despite this knowledge, he persisted in shouting and shoving S.'s horse's face and neck.[2] The trial court reasonably could infer that these "acts were clearly intentional . . . and were intended by [Coates] to disturb the peace of [S.]." Accordingly, the court's findings were supported by sufficient evidence.

¶7 Coates additionally contends that Arizona's right-of-way statutes mandate the reversal of his conviction. He argues that A.R.S. §§ 28-625, 28-794, and 28-796 required S. to yield the roadway to him, which he maintains excused his "place[ment of] his hands on the horse to prevent collision and injury." These statutes, however, are irrelevant to Coates's conviction because, as the trial court clearly articulated, the disorderly conduct occurred after

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[2]To the extent Coates portrays himself as a victim of an "unprovoked attack" and claims he did not "attack[], hit or slap[]" the horse and that the trial court misunderstood his testimony, we need not accept his version of events and we defer to the trial court's assessment of the evidence. *See Dixon*, 216 Ariz. 8, ¶ 10, 162 P.3d at 660 (facts viewed in light most favorable to sustaining conviction); *State v. Tapia*, 159 Ariz. 284, 288, 767 P.2d 5, 9 (1988) (trial court resolves conflicting testimony).

the initial collision, when Coates continued to yell and hit the horse, not when he first touched it.

¶8 Coates's additional reliance on the defense of justification is similarly misplaced. As Coates acknowledges, A.R.S. § 13-404 permits a person to use physical force to the extent necessary to protect against another person's unlawful use of physical force. Even assuming the trial court believed S. had "attack[ed]" Coates by not yielding to him, Coates was not justified in striking the horse after the initial contact had occurred.[3] S. testified at trial that he had moved the horse to face Coates in an attempt to calm it, but did not advance on Coates or give any indication he intended to physically attack him. The trial court could thus find there was no "use of unlawful physical force" Coates needed to defend against and he was not entitled to use force against S. § 13-404.

Other Claims

¶9 Coates additionally claims, relying to a great extent on evidence not in the record before us, that the trial court abused its discretion by denying his motion to dismiss based upon "outrageous governmental misconduct." This argument essentially consists of accusations that the county attorney met with Coates's neighbors in order to collude against

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[3]Coates's claim that he was justified because S. had been whipping him with his reins is not supported by the record. S. testified he hit Coates with the reins only in response to Coates's continued pushing of the horse. *See* § 13-404(B)(3)(a); *State v. Bojorquez*, 138 Ariz. 495, 498, 675 P.2d 1314, 1317 (1984) (one who provokes another's use of force cannot claim self-defense unless he or she withdraws or communicates intent to withdraw from encounter). As previously noted, we defer to the trial court's resolution of conflicting testimony. *State v. Williams*, 27 Ariz. App. 279, 285, 554 P.2d 646, 652 (1976).

him. Having reviewed the transcripts of both the trial and pretrial motions and in light of the lack of evidence supporting such claims or their relevancy to the charge at issue,[4] we disregard this argument. *See State v. Lindsay*, 5 Ariz. App. 516, 518, 428 P.2d 691, 693 (1967) (appellate court only reviews matters appearing in the record before it).

¶10 Finally, Coates claims the trial court erred in its failing to preclude evidence gathered from his cellular telephone after what he contends was an illegal search and seizure. But we agree with the state that any error in admitting the evidence was unquestionably harmless.[5] *See State v. Jeffrey*, 203 Ariz. 111, ¶ 15, 50 P.3d 861, 865 (App. 2002) ("Error is harmless when it can be said beyond a reasonable doubt that it did not affect the verdict."). The state introduced photographs obtained from Coates's telephone as evidence he committed aggravated harassment, the two unrelated charges of which he was acquitted. Although Coates points out one of the photographs was also introduced in connection with the disorderly conduct charge, it was Coates who introduced it. *See State v. Logan*, 200 Ariz.

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[4]Coates concedes that there is no evidence of many of these alleged meetings, but he contends the trial court erred in quashing a subpoena requiring the county attorney to testify at the hearing held on his motion to dismiss. But he has neither provided record citations for this argument nor even suggested a "compelling need" for such testimony beyond mere speculation. *See State v. McClellan*, 125 Ariz. 595, 596, 611 P.2d 948, 949 (App. 1980). Accordingly, we do not address this argument. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (explaining "'[o]pening briefs must present significant arguments, supported by authority'"), *quoting State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989).

[5]We therefore need not address Coates's substantive arguments on the legality of this search and seizure and whether the trial court correctly denied his motion to suppress or erred in admitting the photographs at trial.

564, ¶ 9, 30 P.3d 631, 632-33 (2001) (court will not reverse when complaining party invited error). Moreover, even had the state introduced the photograph, the picture in question was of S. sitting on his horse and waving from a distance. Coates does not appear in the picture and it is difficult, if not impossible, to see what, if any, probative value this picture would have had for the state's case.

Disposition

¶11 For the foregoing reasons, Coates's conviction and sentence are affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

JOHN PELANDER, Judge