ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CACR06-1489

October 3, 2007

BARRY LAVERNE JOHNSON, JR. APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [CR-06-861]
V.	HON. WILLARD PROCTOR, JR., CIRCUIT JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

This appeal involves an altercation that occurred at Club 25 in Little Rock, Arkansas, on December 4, 2005. Appellant Barry Johnson got into a "tussle" with another patron, Marcus Mayweather. While the two were "tussling," Johnson brandished a firearm and fired approximately five shots. Mayweather sustained gun-shot wounds to his elbow and neck. During the gunfight, a stray bullet hit one of the club's patrons, Britney Tatum, in the leg. As a result, Johnson was convicted of two counts of first-degree battery. On appeal, he argues that the evidence supporting one of these battery convictions was insufficient because the State failed to prove that it was his "conscious object" to harm Tatum. We affirm.

On appeal, we must affirm Johnson's conviction if there is substantial evidence to support it. *See Burley v. State*, 348 Ark. 422, 73 S.W.3d 600 (2002). We review the evidence,

direct and circumstantial, in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). If the evidence is forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture, we will find it to be substantial. *Id.* In our review, only evidence supporting the verdict will be considered. *Id.*

Here, Johnson was charged with first-degree battery pursuant to Arkansas Code Annotated section 5-13-201(a)(8) (Repl. 2006), which required proof that he had the purpose to cause physical injury to another and caused physical injury by means of a firearm. Johnson contends that the State failed to prove that "he had the purpose to cause physical injury to Tatum." Indeed, the facts demonstrate that his malicious purpose was not directed at Tatum. Her injury was collateral to the harm he intended (and successfully) inflicted on Mayweather. But, the fact remains that Johnson did have the "conscious object" to cause harm and did so when he discharged a weapon in a crowded bar.

It is immaterial, based on the doctrine of transferred intent, that Tatum was not Johnson's intended victim. *See Hubbard v. State*, 334 Ark. 321, 973 S.W.2d 804 (1998). The notion of transferred intent is not a new legal theory. Our case law is replete with references to the concept. As explained by our supreme court in 1919, "[w]here the accused shoots at one man and kills another, malice will be implied as to the latter; and a felonious intent is transferred, on the same ground, as where poison is laid to destroy one person and is taken by another." *Brooks v. State*, 141 Ark. 57, 62, 216 S.W. 705, 707 (1919). Here, once the transferred-intent doctrine is applied to the facts of the case, Johnson's appeal is easily

resolved. He meant to cause harm; he did cause harm. As such, his conviction for the first-degree battery is affirmed.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.