Circuit Court for Baltimore City
Case No. 24-C-16006388

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2559

September Term, 2018

FABIEN LARONDE

v.

TONY R. LOPEZ

Arthur,
Wells,
Gould,

JJ.

Opinion by Gould, J.

Filed: February 3, 2020

The "intent-to-frighten" type of common law assault requires that the defendant intend to place the victim in reasonable apprehension of imminent, harmful contact. The issue before us is how imminent must the impending attack be to sustain an intent-to-frighten assault.

A jury found that former police detective Fabien Laronde[1] was civilly liable for assaulting Baltimore resident Tony R. Lopez while both were in the Clarence M. Mitchell, Jr. Courthouse waiting to testify in a criminal trial. The alleged assault did not involve a weapon, a raised hand, a furtive movement, or any other overt physical act. Nor were there any words threatening an *impending* physical confrontation.

There was, however, evidence that Mr. Laronde intended to immediately place Mr. Lopez in fear that Mr. Laronde had ordered a "hit" on Mr. Lopez to intimidate him into not testifying. And there was evidence that, by walking towards Mr. Lopez before sitting down on a bench outside the courtroom, Mr. Laronde closed the distance to Mr. Lopez from approximately ten or fifteen feet to seven feet.

The evidence supported a finding that Mr. Laronde intentionally put Mr. Lopez in fear for his life, and that he was playing head games with Mr. Lopez to amplify his torment. The threat Mr. Lopez perceived to his life, however, was not from an imminent attack, but rather from an unknown person at an unknown time and place as retribution for his upcoming trial testimony. Because that evidence did not support a finding that Mr. Lopez

[1] By the time of trial, Mr. Laronde had been fired.

was placed in reasonable apprehension of an *imminent* attack, we reverse the judgment of the circuit court.

BACKGROUND

In late 2015, Mr. Laronde, a then-suspended Baltimore City Police Detective, and Mr. Lopez were set to testify in a criminal trial (the "Pinnacle trial") in the Circuit Court for Baltimore City. Mr. Laronde was a fact witness for the State; Mr. Lopez was an impeachment witness for the defense based on an incident that had allegedly occurred five years before, in which Mr. Laronde and two other officers detained and beat Mr. Lopez (the "prior incident").[2]

As to the current incident, both Mr. Lopez and Mr. Laronde were standing in the hallway just outside of the courtroom while the court was holding a closed-door hearing to determine the admissibility of Mr. Laronde's internal affairs file. During their wait, Mr. Lopez was speaking to a journalist, Jayne Miller, who had previously published an unflattering article about Mr. Laronde, and Mr. Laronde was speaking to someone on the phone. Mr. Lopez allegedly heard Mr. Laronde state to the person on the phone: "I'm going to give him a hit . . . . Let me take this picture." Mr. Laronde then appeared to start taking pictures of Mr. Lopez with his phone.

Mr. Lopez asked to see the pictures; Mr. Laronde refused. Mr. Lopez became agitated, and Ms. Miller went to get a sheriff's deputy. While the men were alone, Mr. Laronde allegedly intimated that if Mr. Lopez testified against him, he would retaliate. Ms.

[2] Because we are required to view the evidence in the light most favorable to Mr. Lopez, we shall accept as true his account of the prior incident.

Miller then returned with a sheriff's deputy who confiscated Mr. Laronde's phone. Mr. Lopez reported in the days and weeks following the incident that he feared that the "hit" Mr. Laronde threatened would come to pass, and he developed anxiety and depression as a result.

Mr. Lopez filed a civil action against Mr. Laronde for several torts, including assault.[3] Mr. Lopez contended that this was a classic case of witness intimidation in which Mr. Laronde threatened to put a "hit" out on him and have him killed if Mr. Lopez testified against him. Mr. Laronde's attorney moved for judgment on the assault charge, arguing that a threat of violence at some unspecified time in the future was not sufficiently "imminent" to constitute assault. The judge denied the motion and the jury found Mr. Laronde liable for assault.

The Trial

Mr. Lopez testified and called several fact witnesses—including Ms. Miller and two sheriff's deputies—who testified about what had happened on that day in the courthouse.[4] The jury also watched a video of the incident (which did not have audio) from the courthouse's security cameras.

[3] Mr. Lopez also brought claims for "violation of the Maryland Declaration of Rights" and intentional infliction of emotional distress. The trial court granted Mr. Laronde's motion for judgment on these counts after the close of all evidence. Mr. Lopez chose not to cross-appeal this ruling.

[4] Both parties also presented other fact and expert witnesses to testify about the subsequent physical and emotional consequences of the incident to Mr. Lopez. This testimony is not relevant to the instant appeal.

Because this appeal is a challenge to the sufficiency of the evidence supporting the jury's verdict, we will lay out the trial evidence in detail in the light most favorable to Mr. Lopez.

Opening Statement

In opening statements, Mr. Lopez's attorney explained that Mr. Laronde threatened to use the resources available to him as a former police officer to retaliate against Mr. Lopez if he went through with his testimony:

> Now as she's doing that, Mr. Lopez and Officer Laronde in those 8 to 10 seconds are alone. No one else is in the hallway. No one else is there. No one else is in [] earshot. Evidence will show at that point Officer Laronde, who had prior contact with my client, who stole money from my client, who beat and assaulted my client, said "Why are you here? Do you know what I can get done to you? You should leave." That's what he said. That's when he intimidated.

Mr. Lopez's attorney further explained how this caused Mr. Lopez to develop a crippling fear that, at some point in time, he was going to be killed:

> He was scared. He was in fear. He didn't know what was going to happen. From Baltimore City, he's had prior contact with Officer Laronde, and hey, anything can happen. Anybody can put a hit on somebody. He feared for his life.
>
> ***
>
> The evidence will show when he goes and catch the bus, he doesn't stand at the bus stop. He stand and hides around the corner. He wait until the bus come, then he comes out. His family members will testify he used to be outgoing. He used to come over and eat crabs and, you know, used to come over and just hang out. He's avoiding them. He's in fear and it's real. He's not the same person, and he's doing something about it. He's undergoing treatment. He's undergoing therapy. But he's serious about it.

This theme remained constant from the beginning of trial to the very end.

Mr. Lopez's Testimony

Mr. Lopez testified that Deborah Levi (the public defender in the Pinnacle trial) wanted him to testify about the prior incident. That day, Mr. Lopez was driving in Baltimore when he was pulled over by Mr. Laronde and two other officers. The officers searched his car, placed him under arrest, and began to question him. When Mr. Lopez refused to give them the answers they wanted, Mr. Laronde beat him. After the incident, Mr. Lopez reported the prior incident to Internal Affairs officers at the Baltimore City Police Department.[5]

When Mr. Lopez arrived at the courthouse to testify against Mr. Laronde in the Pinnacle trial about the prior incident, he stepped off the elevator, made eye contact with Mr. Laronde, and became nervous and walked past the courtroom. Eventually, Mr. Lopez went into the courtroom, where he saw Ms. Levi.

At some point during the hearing, the judge sealed the courtroom to address the admissibility of Mr. Laronde's internal affairs records. Mr. Lopez left the courtroom to wait in the hallway. Mr. Lopez began speaking with Ms. Miller about family matters when he overheard Mr. Laronde, who was talking on his cell phone, say into his phone "I'm going to give him a hit . . . . Let me take this picture." Mr. Lopez interpreted Mr. Laronde's statement as "I'm going to get him killed." Mr. Lopez asked Mr. Laronde if he had taken his picture. Mr. Lopez testified that he was immediately fearful that Mr. Laronde would

[5] The record does not indicate what became of that complaint.

send his picture to someone with the means and willingness to retaliate on Mr. Laronde's behalf for testifying against Mr. Laronde.

Ms. Miller asked Mr. Laronde why he would take a picture of Mr. Lopez, knowing that it was prohibited in the courthouse. Mr. Laronde responded that he had "nothing to say to [her] because [she] put a lot of messed up articles up there about [him]." At that point, Ms. Miller went to get a sheriff's deputy. While they were alone, Mr. Laronde said to Mr. Lopez "do you know what I can get done to you? Why are you here? Why don't you leave[?]" Ms. Miller then returned with a sheriff's deputy, who confiscated Mr. Laronde's phone. Several other officers arrived, and Major Sabrina Tapp-Harper then escorted Mr. Lopez to the "witness room."

When Mr. Lopez left for the night, he was escorted by a bevy of state officials:

> [PLAINTIFF'S COUNSEL]: And did you leave alone?
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> [MR. LOPEZ]: I left with Deputy Lev[i] and all the rest of the Public Defenders.
>
> [PLAINTIFF'S COUNSEL]: And how did you feel when you were leaving out the courthouse?
>
> [MR. LOPEZ]: In fear. Like something was going to happen to me as soon as I walk out of the courthouse.

The Video

The encounter was captured on the courthouse's security camera without sound. The video began by showing Mr. Laronde talking on his cell phone. Mr. Lopez and Ms. Miller then exit a courtroom and can be seen talking closely to one another, about ten to fifteen feet away from Mr. Laronde. Seconds later, Mr. Lopez and Mr. Laronde notice one

another and a discussion begins among the three individuals. Though Mr. Lopez appears agitated, Mr. Laronde (perhaps intentionally) adopts a relaxed stance. After about a minute, the video shows Mr. Laronde walking in the direction of Mr. Lopez and Ms. Miller, cutting the distance between them roughly in half, before sitting down on a bench next to the entrance to the courtroom, and crossing his legs. The discussion continues for about ten seconds before Ms. Miller leaves, at which point Mr. Lopez moves across the hallway, directly facing Mr. Laronde. Ms. Miller returns approximately fifteen seconds later, followed eventually by several sheriff's deputies.

Ms. Miller's Testimony

Ms. Miller, an investigative reporter for WBAL Television, testified that she was in the courtroom covering the hearing regarding Mr. Laronde's personnel record because she had previously written a story about Mr. Laronde's police misconduct. After the courtroom was sealed, Ms. Miller and Mr. Lopez left and started speaking in the hallway, about eight to ten feet from Mr. Laronde, who was talking on his cell phone. Ms. Miller testified that she overheard Mr. Laronde say something like "oh, I got to get off the phone. I got to take this picture." Mr. Laronde then appeared to start taking pictures of Mr. Lopez and Ms. Miller with his phone. Though Ms. Miller told Mr. Laronde he could not take pictures in the courthouse, Mr. Laronde persisted. Ms. Miller asked to see the pictures, but Mr. Laronde refused. Mr. Lopez—who was also asking Mr. Laronde to stop taking pictures—was becoming visibly upset.

Ms. Miller saw a sheriff's deputy at the other end of the hallway and went to get her attention. She told the sheriff's deputy—Deputy Shauna Carroll—what had happened and

they walked back to where Messrs. Lopez and Laronde were standing. At that point, other individuals started to arrive on the scene. Ms. Miller testified that she never heard Mr. Laronde say that he was going to get Mr. Lopez "hit," nor did she hear any other specific threat.

Deputy Carroll's Testimony

Deputy Carroll testified that she was on duty in the courthouse and was responsible for supervising the media during the jury selection process in one of the Freddie Gray trials taking place on the fourth floor. She was walking down the hallway when she saw Ms. Miller about ten feet away waiving to get her attention and running towards her. Ms. Miller explained that a police officer—whom she identified as Mr. Laronde—was videotaping in the hallway. Deputy Carroll approached Mr. Laronde, who was sitting down, and asked him if he was in fact videotaping. Mr. Laronde admitted that he was. Deputy Carroll informed the presiding judge in the Pinnacle trial about what had happened. Deputy Carroll confiscated Mr. Laronde's phone. Deputy Carroll testified that Mr. Lopez looked frightened. Deputy Carroll subsequently wrote a report of the incident.

Major Tapp-Harper's Testimony

Major Tapp-Harper testified that she was walking down the hallway to check on the Freddie Gray trials when Deputy Carroll told her that an individual was taking photographs in the courthouse. When they arrived on the scene, Ms. Miller and Mr. Lopez told her that Mr. Laronde had been videotaping him and that Mr. Lopez was afraid. As a result, Major Tapp-Harper took Mr. Lopez to the victim room for his safety. She noticed that Mr. Lopez

was shaking. She later spoke to a lieutenant in the Baltimore Police Department's Internal Affairs Division about the incident.

Ms. Levi's Testimony

Ms. Levi testified that she was the public defender who was trying the case in which Mr. Laronde and Mr. Lopez were set to testify. On the day of the hearing, Ms. Levi and Mr. Lopez called Mr. Lopez's attorney in an unrelated matter to make sure there were no issues with him testifying. Afterward, the two returned to the courtroom. Shortly thereafter, Judge DiPietro sealed the courtroom and Mr. Lopez left. The proceedings were then interrupted by a sheriff's deputy who informed the parties and the court that there had been an incident in the hallway. When Ms. Levi went out to the hallway to see what happened, Mr. Lopez seemed visibly fearful.

Mr. Laronde's Testimony

Mr. Laronde disputed Mr. Lopez's version of both confrontations. Mr. Laronde testified that in 2010, he noticed Mr. Lopez was drinking in his car and suspected that he was involved in a drug sale. While arresting Mr. Lopez, a phone call coming into Mr. Lopez's phone led the officers to the buy spot, where they found several mid-to-upper level drug dealers. Mr. Laronde denied ever striking Mr. Lopez.

Mr. Laronde professed to a different recollection about what happened in the courthouse on the day of the alleged assault. He testified that on the day of the hearing, Mr. Lopez was in the hallway when Mr. Laronde stepped out of the elevator. At that time, Mr. Lopez made a remark or noise indicating that he wanted Mr. Laronde to know "that he was there," so Mr. Laronde entered the courtroom and checked in with the State's Attorney.

While there, he saw Ms. Miller, who had written an article about him the week prior. Mr. Laronde then left the courtroom and called a lawyer who he knew to discuss the fact that Ms. Miller was at the hearing. While on the phone, Ms. Miller came out of the courtroom, so Mr. Laronde began to videotape her so that he would have a record of their interaction. Mr. Laronde explained:

> Um, I was on the phone still speaking and I'm like well, I'm like here she comes out. She's coming out with whoever she was in there with. And the person on the line with me goes well you know what you got to do, you better cover yourself. That's what, and that's what we were talking about the whole time while I was on the phone.
>
> At that point they began saying things to me like you taking a picture of me, what are you doing. It was almost instantaneous, they both looked at me, they came out of the court, they looked over, and conversation started. So at that time I stopped, I said let me go, I hung up the phone and I started, I started videotaping Jayne Miller.
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> And I started videotaping Jayne Miller and Mr. Lopez, I was really videotaping Jayne Miller, because at that point and where I was in my career, she'd already tried to hurt me once and I just, she, I had said something to her one time in the article and she changed what I said and put it in the paper.

He then put the phone in his shirt pocket ("like a body cam") and walked towards them. Ms. Miller then left to get a sheriff's deputy, who came and confiscated his phone. Mr. Laronde testified that he never threatened Mr. Lopez or made any threatening gestures towards him. He also denied saying anything to Mr. Lopez when Ms. Miller went to get the sheriff's deputy.

Closing Arguments and the Verdict

During closing argument, Mr. Lopez's counsel framed the assault as a threat of retaliation that would occur at some point after Mr. Lopez left the courthouse:

> [Mr. Laronde] wanted to check some people. He can get on certain data bases. He can look me up. He had access to certain things. Yes, this [was] an experienced law enforcement officer. That's why he knew he had the present ability to do it . . . . He knows what he's capable of as an officer . . . . He made a call yesterday to get a report that we never had. He admitted it to you on the stand. Only what is convenient to him, that's the power he has. That's the power he possesses over Mr. Lopez.
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> Was he placed in fear of imminent harm? Of course he was. And that's how that ties into the 2010 [incident]. We know, we heard about it . . . . How many criminals or felons does he know that owes him favors? How many CIs that he knows that owes him favors? Hey, you know Lopez? Yeah. Okay, take care of it.
>
> Again, he's a narcotics officer. Plain clothes. He's out on the street all the time. He knows street terms. He knows what I'm going to get you hit means. We know what I'm going to get you hit means. It means I'm going to hurt you, possibly kill you. Let's go on further.
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> You know my rep . . . . If that's not a threat, what is? Someone looking at you, looking at you smirking. What does a smile say? That has power. Whether he's suspended or not, it doesn't matter. He has contacts.

The jury found Mr. Laronde liable for assault and awarded Mr. Lopez $429,090, which the trial court remitted to $400,000 pursuant to the Local Government Tort Claims Act. Mr. Laronde filed a motion for judgment notwithstanding the verdict, which was denied. He timely appealed the judgment of the circuit court.

DISCUSSION

THE IMMEDIACY OF HARM REQUIREMENT

There are two types of common law assault: attempted battery and intent-to-frighten. Hickman v. State, 193 Md. App. 238, 251 (2010). The pattern jury instructions (read to the jury in this case) describe the latter form by defining an assault as:

> an intentional threat, either by words or acts, to physically harm another person without that person's consent. Actual contact is unnecessary. However, it must appear to the person threatened that the person making the threat has the present ability to carry it out, and the person threatened must be put in reasonable fear of imminent harm.

Maryland Civil Pattern Jury Instruction 15:1 ("MCPJI") (5th ed. 2019 Supp.); see also Lamb v. State, 93 Md. App. 422, 436-45 (1992).

As the above authorities indicate, the timing of the threatened act is crucial: in order to establish this type of assault, the victim must be in fear of *imminent* physical harm. "An act intended by the actor as a step toward the infliction of a future contact, which is so recognized by the other, does not make the actor liable for an assault." Restatement (Second) of Torts ("Restatement") § 29 (1965). The victim's apprehension must be objectively reasonable, as assessed by looking at "the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner's position." Katsenelenbogen v. Katsenelenbogen, 365 Md. 122, 138 (2001); see also Lamb, 93 Md. App. at 442 (emphasis added) (Assault is fully consummated "once the victim is placed in *reasonable* apprehension of an imminent battery").

Our task is to determine whether sufficient evidence existed to demonstrate that Mr. Laronde's conduct put Mr. Lopez in fear or apprehension of an immediate harmful contact, and if so, that such fear or apprehension was objectively reasonable. See Katsenelenbogen, 365 Md. at 138. We review the evidence in the light most favorable to Mr. Lopez to determine whether there was *any evidence* from which a rational jury could have found that Mr. Lopez was in reasonable fear of an imminent battery. See Roman v. Sage Title Grp., LLC, 229 Md. App. 601, 607 (2016), aff'd, 455 Md. 188 (2017); Blue Ink, Ltd. v. Two Farms, Inc., 218 Md. App. 77, 91 (2014).

MR. LARONDE'S WORDS AND ACTIONS

Mr. Lopez's Original Theory of the Case

As discussed above, Mr. Lopez argued at trial that Mr. Laronde's behavior put him in reasonable fear that Mr. Laronde had put a "hit" out on him and that he would be attacked at some point after he left the courthouse.[6] This fear was not sufficiently imminent to form the basis of an intent-to-frighten assault. See, e.g., Restatement § 29.

The Court of Appeals in Howell v. State, 465 Md. 548, 564-65 (2019) recently addressed whether a witness's fear that he would be attacked after leaving the courthouse was sufficiently "present, imminent, and impending" to generate a duress defense in his criminal contempt trial for refusing to testify in another proceeding. Finding that "imminent" in that context "connotes simultaneity, or something close to it," the Court held

[6] Mr. Lopez survived summary judgment with the same theory, arguing that "[t]he threatened and imminent battery that Plaintiff Lopez feared, but which fortunately never came to pass, was the terrifying dread that in the next minutes upon leaving the courthouse, a bullet could implode into his skull."

that the witness's fear of retaliation for testifying was of future, not imminent, personal injury. Id.

In Howell, the Court of Appeals hewed closely to the dictionary definition of the terms, id. at 564, rather than the more expansive view of imminence found in other contexts—for instance, self-defense. See, e.g., Porter v. State, 455 Md. 220, 241-49 (2017) (declining to apply the dictionary definition of "imminent," instead holding that it encompasses danger that may be farther removed in time than "minutes or hours"). The Court's more restrictive view of imminence in the duress context in Howell is consistent with Maryland law in the assault context, which has used "imminent" and "immediate" interchangeably. See, e.g., Snyder v. State, 210 Md. App. 370, 382 (2013) ("The intent to frighten variety requires that the defendant commit an act with the intent to place another in fear of immediate physical harm, and the defendant had the apparent ability, at that time, to bring about the physical harm."). Thus, the legal principles applied in Howell are, at the very least, instructive here. And since the nature of Mr. Lopez's fear was the same as the defendant's in Howell, Mr. Lopez's fear of a post-testimony retaliatory attack is not imminent for the reasons expressed in that case, and therefore does not give rise to a viable claim for assault.

Mr. Lopez's Case on Appeal

Mr. Lopez no longer attempts to defend the jury's verdict based on the threat of post-courthouse retaliation. Instead, he argues that Mr. Laronde's words and actions put him in reasonable fear of being attacked *at that moment*, thus satisfying the imminence requirement of assault.

Mr. Lopez identifies several actions and words that he argues, taken together, put him in reasonable fear of imminent battery. Specifically, Mr. Lopez identifies the following facts:

- Five years earlier, Mr. Laronde physically beat Mr. Lopez while Mr. Lopez was handcuffed in the back of a police car;
- Mr. Laronde made several verbal threats: "I'm going to give him a hit" and "Do you know what I can get done to you? Why are you here? Why don't you leave[?]";
- Mr. Laronde walked toward Mr. Lopez; and
- Mr. Laronde made several threatening facial expressions, including winking and smirking at Mr. Lopez.

Taken together and construed in the light most favorable to Mr. Lopez, this evidence is insufficient to support a jury verdict of an "intent-to-frighten" type of assault for two reasons, explained below. First, based on his own testimony, there is no evidence that Mr. Lopez was placed in fear of an imminent, rather than future, battery. Second, even if Mr. Lopez was in actual fear of an imminent battery, such a fear was not objectively reasonable, given the circumstances.

Mr. Lopez's Actual Fear—Of What?

By his own admission in his direct testimony and under cross-examination, Mr. Lopez feared that one of Mr. Laronde's acquaintances would attack Mr. Lopez *after* Mr. Lopez testified and left the courthouse. Specifically, Mr. Lopez testified on direct examination that when Mr. Laronde asked Mr. Lopez if he knew what he (Mr. Laronde) could do to him, Mr. Lopez feared for his life. He feared that after he testified, "something

was going to happen to [him] as soon as [he walked] out the courthouse." Mr. Lopez explained:

> [PLAINTIFF'S COUNSEL]: Going back to the—going back to the incident when Officer Laronde was on his phone and he was speaking to an unknown individual on that phone, do you recall testifying he said, "I'm going to get him a hit"?
>
> [MR. LOPEZ]: He said, "I'm going to get him a hit."
>
> [PLAINTIFF'S COUNSEL]: What, if anything, did that mean to you?
>
> [MR. LOPEZ]: Mean he going to get me killed, going to get something done to me.

After the incident, Mr. Lopez was constantly in fear of being attacked:

> [PLAINTIFF'S COUNSEL]: And what were your complaints when you went to [treatment]? What did you tell them you were suffering from, your problem was?
>
> [MR. LOPEZ]: I was paranoid.
>
> [PLAINTIFF'S COUNSEL]: Okay.
>
> [MR. LOPEZ]: I felt like I was being followed. I didn't—most of them knew what was going on, as far as the investigation with my picture being taken in the courthouse. I'd call—I would call Internal Affairs. You know, I'd call around and ask them why—like why y'all not, you know, following through with this. Y'all know I was a witness. Something could happen to me any day. They just, you know—they mostly didn't give me no information. It made me even more worried because I felt like ain't nobody care.
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> ***
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> [PLAINTIFF'S COUNSEL]: What was some of the other feelings that you experienced after the incident that you never experienced before?
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> [MR. LOPEZ]: Weight loss. Not able to eat. Having bad dreams. Feeling like I'm being watched. I'm scared to come out the house. Like because, you know, I am scared to come out the house like to warm the car

> up or—you know, because I share the car with my girlfriend. So it's actually her vehicle, but she let me drive it. And on some days, she got to be at work at a certain time, I got to catch the bus. So I'd have to take the MTA. And I would like take a detour, you know, always watching. When I'm on the bus stop, I would stand back, you know.
>
> [PLAINTIFF'S COUNSEL]: What do you mean you would stand back from the bus stop?
>
> [MR. LOPEZ]: I would stand back from the bus stop because I didn't want to stand out in the open by myself being as though I'm going to work that early in the morning. I'm commuting, you know, five o'clock in the morning. There's no one outside. So, therefore, I don't want to be standing out there alone.
>
> [PLAINTIFF'S COUNSEL]: Okay.
>
> [MR. LOPEZ]: Because something could happen to me and nobody would know.

Mr. Lopez further explained on cross-examination how he perceived Mr. Laronde's words and deeds:

> [DEFENSE COUNSEL]: But not at any point did he come towards you as if he was going to immediately hurt you at that point?
>
> [MR. LOPEZ]: He made me feel like my life was in danger.
>
> [DEFENSE COUNSEL]: Generally, you said he made you feel like your life was in danger?
>
> [MR. LOPEZ]: Yeah. I was in fear for my life. He immediately put me in fear for my life.
>
> [DEFENSE COUNSEL]: But he didn't—there wasn't any—he didn't come, at that point, as if he was going to hurt you at that exact moment?
>
> [MR. LOPEZ]: No.
>
> [DEFENSE COUNSEL]: Okay. You just felt that, at some point, you could be hurt in the future?

[MR. LOPEZ]: I felt I could have got killed walking out the courthouse.

[DEFENSE COUNSEL]: You felt—you didn't know what was going to happen in the future?

[MR. LOPEZ]: I didn't know.

[DEFENSE COUNSEL]: It just felt like it was sometime down the line; is that correct?

[MR. LOPEZ]: Sir, I was just in fear for my life, sir.

[DEFENSE COUNSEL]: Okay. So—but my question is, you felt like it was some point down the line you could be hurt?

[MR. LOPEZ]: He took my picture, sir. So I felt like he was going to send my picture to somebody. Whoever he was talking to on the phone, I felt whatever the person he was sending my picture to.

[DEFENSE COUNSEL]: Okay. And I'm saying that you didn't know when, if anything, could happen to you?

[MR. LOPEZ]: No, I didn't know when.

Viewed in the light most favorable to Mr. Lopez, his testimony established that although he was clearly placed in reasonable fear from Mr. Laronde's threats, the fear that gripped him was of a physical attack happening sometime in the future. Mr. Lopez did not testify that he feared Mr. Laronde would attack him then and there, while they were standing in a hallway outside of the courtroom.

On redirect, Mr. Lopez's lawyer tried to inject some immediacy into Mr. Laronde's perceived threat:

[PLAINTIFF'S COUNSEL]: Now, with respect to the—[Mr. Laronde's attorney] asked you about the threat by Officer Laronde. Now, with respect to that threat, do you recall that you were—you were placed in fear; is that correct?

[MR. LOPEZ]: Yes, sir.

[PLAINTIFF'S COUNSEL]: Now, do you know when you—what Officer Laronde may do at that point?

[MR. LOPEZ]: I had an idea.

[PLAINTIFF'S COUNSEL]: Did you know whether it was going to be immediate or whether it was going to be later or whether it was going to be a year from now?

[MR. LOPEZ]: I felt like it was going to happen right away.

[PLAINTIFF'S COUNSEL]: Right away meaning immediate?

[MR. LOPEZ]: Yes, sir.

Mr. Lopez argues that this testimony was enough to show that he was "immediately put in fear" of imminent harm.[7] We disagree.

We are mindful that the jury is entitled to accept whatever testimony it so chooses. However, Mr. Lopez's redirect testimony was so vague as to be meaningless. Saying "I had an idea" when asked if he knew what Mr. Laronde "may do" does not tell us anything different from his prior, very specific testimony that he feared being attacked after he testified and left the courthouse. Put another way, what was his "idea" if it was something other than what he had already testified? From his redirect testimony, we don't know.

[7] There is a significant—and here, dispositive—difference between being *immediately* placed in fear of harm and being placed in fear of *immediate* harm. It is not enough that a victim be immediately placed in fear, if that immediate fear is of future, not imminent, harm. See MCPJI 15:1 ("the person threatened must be put in reasonable fear of imminent harm"). Thus, Mr. Lopez's testimony that Mr. Laronde "immediately put [him] in fear for [his] life" does not speak to the imminence of the threat that placed him in immediate fear, especially in light of his testimony that his fear was of being attacked at some unknown time and place in the future.

Similarly, when asked if he knew "whether *it* was going to be immediate," Mr. Lopez's affirmative response does not tell us what the "it" was: was it the act of putting out a hit on him, or was it the hit itself? Mr. Lopez's redirect testimony therefore, can only be understood in the context of his prior testimony, because standing alone it tells us nothing about *what* he feared Mr. Laronde would do. Thus, Mr. Lopez's initial account—which was insufficient to show a reasonable fear of imminent harm—stood untouched by his redirect testimony.

The Reasonableness of Fearing Imminent Battery from Mr. Laronde's Actions

Even if we were to credit Mr. Laronde's redirect testimony as sufficient for the jury to have found that he feared an *imminent* attack, unless such fear was objectively reasonable, the jury's verdict cannot stand. See Lamb, 93 Md. App. at 436 (quotation omitted) (noting that civil assault is committed when the defendant intentionally "does some act" which causes reasonable apprehension of immediate harm); Harrod v. State, 65 Md. App. 128, 131 (1985) (citation omitted) (defining the intent-to-frighten type of assault as "an unlawful intentional act which places another in reasonable apprehension of receiving an immediate battery"). Viewed in the light most favorable to Mr. Lopez, we find that the evidence was insufficient to show that a fear of an imminent attack was objectively reasonable.

In Dixon v. State, 302 Md. 447 (1985), the Court of Appeals upheld the conviction of a defendant who, with a "cold, hard look in his eyes," demanded that a cashier give him "all her money." Id. at 464 (cleaned up). Critically important to the decision was the fact that during the confrontation, the defendant was carrying a newspaper folded in such a

manner that it looked like the defendant was pointing a concealed weapon in the victim's direction. Id.

Similarly, in Offutt v. State, 44 Md. App. 670, 675 (1980), we upheld an assault conviction where the defendant, during a robbery attempt, placed his hand in his pocket as if he was carrying a weapon and asked the victim "do you want to die?" From the vantage point of the victim, therefore, it was objectively reasonable to be fearful.

On the other hand, in Spencer v. State, 422 Md. 422 (2011), the Court of Appeals, while discussing robbery convictions, held that the evidence that the defendant walked up to a cashier and, without brandishing a weapon, merely told him, "[d]on't say nothing" was legally insufficient to show that the defendant created a reasonable apprehension of an imminent battery. Id. at 425. The Court determined that this phrase, "by itself, would not cause an ordinary, reasonable person to have felt apprehension that [the defendant] was about to apply force." Id. at 436.

Here, as in Spencer, there was nothing that Mr. Laronde did or said that would place a reasonable person in fear of an *imminent* battery. None of his movements were overtly threatening and there was no indication that he was carrying a weapon. See Spencer, 422 Md. at 435-36 (discussing the threat of a weapon as a significant factor in determining whether a reasonable person would have perceived a threat of force). And any threats made

by Mr. Laronde were of future, not imminent, violence, as established unambiguously by Mr. Lopez's own testimony.[8]

We are also mindful, of course, that we must fully credit Mr. Lopez's testimony about being beaten by Mr. Laronde five years earlier. And we appreciate that given the severity of the beating as described by Mr. Lopez, it would be objectively reasonable for a person in Mr. Lopez's situation to be fearful of Mr. Laronde. Cf. Williamson v. State, 25 Md. App. 338, 344, (1975) (quotation omitted) (noting that an individual asserting self-defense may show his knowledge of prior acts of violence on the part of the victim to prove that he had "reasonable grounds to believe himself in imminent danger"). But the force of

[8] Mr. Lopez's counsel contended at oral argument that Hill v. State, 134 Md. App. 327 (2000), supports the notion that a verbal threat of *future* harm can support a reasonable apprehension of *imminent* harm. In that case, the defendant walked into his professor's office, brandished a gun, and told him that if the professor did not give him an "A" in his class, the defendant would kill the professor. Id. at 337. The defendant argued that the evidence was insufficient to show an intent to harm the victim immediately, where the threat was of future and conditional harm. Id. at 354-56. We disagreed, saying that based on the evidence in front of us, a rational trier of fact could conclude that the plaintiff was placed in reasonable apprehension of immediate harm, "even though the words that appellant used constituted a threat of harm to occur conditionally and in the future." Id. at 356.

The circumstances surrounding the verbal threat differentiate Hill from the present case. In Hill, the plaintiff was alone in a room with the defendant while the defendant brandished a gun and vividly described how he would dispose of the plaintiff's body. Id. The mere presence of the gun coupled with the threat of murder could place a reasonable person in fear that if he did or said the wrong thing, he would be immediately shot and killed.

Such circumstances are not present here. Here, the threat—that Mr. Laronde would hire a hit man to kill Mr. Lopez—was, by its very nature, something that could only happen in the future. This threat was impossible to fulfill at that moment, in a busy courthouse in full view of sheriff's deputies. As such, Mr. Lopez's reliance on Hill is misplaced.

such evidence is not unlimited. Mr. Lopez testified that, during the previous attack, Mr. Laronde was in a closed vehicle, surrounded by his confederates, whom he presumably anticipated would cover up his illicit activities. Mr. Laronde controlled when and where the attack occurred, and who would witness it. In contrast, during the second incident, Mr. Laronde was in a busy courthouse—packed with participants in, and spectators of, one of the Freddie Gray trials—in plain sight of security cameras, sheriff's deputies (whom he did not know) and an investigative journalist who had already published a negative story about him. Simply put, under these circumstances it would not have been objectively reasonable for Mr. Lopez to have feared an imminent attack in the courthouse, which is presumably why Mr. Lopez failed to acknowledge any such fear at trial.

CONCLUSION

Viewing the evidence in the light most favorable to Mr. Lopez, the nature of Mr. Laronde's threat was in many ways more insidious and terrifying than the threat of an attack in the hallway, which Mr. Lopez would have at least been able to see coming. By our decision here, we do not condone or excuse the conduct that the jury evidently concluded had been committed by Mr. Laronde. Our task is far more focused and precise: to determine if there was enough evidence before the jury to establish the specific elements of a civil assault claim. And as terrifying as the alleged threat from Mr. Laronde undoubtedly was, we are constrained to find that the evidence was insufficient to find him liable for assault.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; COSTS TO BE DIVIDED EQUALLY.