

**IN THE HUALAPAI COURT OF APPEALS**  
**HUALAPAI RESERVATION, ARIZONA**

HUALAPAI TRIBE,	)	App. Div. Case No.: 2011-AP-017
	)	Tribal Court Case No.: 2011-CR-261A
Appellee,	)	
	)	
v.	)	
	)	<b>DECISION AND OPINION</b>
LORRIE SCHRUM,	)	
	)	
Appellant	)	
	)	
	)	
	)	
	)	

Estevan T. Hernandez Jr., Hualapai Public Defender, for Appellant Lorrie Schrum  
Marie James, Tribal Prosecutor, for Appellee Hualapai Tribe

**Before Justice Carole Goldberg (Presiding), Chief Justice Wes Williams Jr., and  
Justice Robert N. Clinton**

**OPINION AND ORDER**

Lorrie Schrum (Appellant or Schrum) appeals her conviction on one count of Battery (Hualapai Law & Order Code § 6.87). Schrum claims that the Tribe presented insufficient evidence at her nonjury trial to support the Tribal Court’s finding of guilt beyond a reasonable doubt. More specifically, Schrum contends that it is legally impermissible, and a violation of her rights under the due process provision of the Hualapai Constitution, Article IX(d), to convict her solely on the basis of the victim’s testimony. In effect, Schrum argues that a victim’s testimony must be corroborated (supported by another source of evidence) in order to serve as the basis for a criminal conviction. This Court finds no such requirement in the Hualapai Constitution or the Hualapai Law & Order Code, and we therefore affirm Appellant’s conviction.

**Background**

On September 6, 2011, following a nonjury trial, Appellant was convicted of one count of Battery (Hualapai Law & Order Code § 6.87) for striking Alicia Mahone (Mahone) in the face. Nine days later Schrum was sentenced to 90 days in custody with 70 days suspended and three months supervised probation. Although the Tribe had intended to call the arresting officer to testify at the trial and to present evidence that the officer had collected at the scene, the officer was unavailable on the trial date. When the

Tribal Court informed Appellant of the officer's absence, Appellant objected and moved to dismiss, on the ground that without the officer and the evidence he collected, the Tribe could not prove its case "beyond a reasonable doubt," as required by Hualapai Law & Order Code, § 6.6. The Tribal Court overruled Appellant's objection and denied her motion, directing the trial to proceed. The Tribe then called Mahone as its only witness. Appellant did not present any witnesses or other evidence, relying on the presumption of innocence that exists in criminal cases. Under the Hualapai Law & Order Code, § 6.6, "In the absence of ... proof [of each element of the offense beyond a reasonable doubt] the defendant shall be acquitted."

### **Discussion**

Appellant is asking this Court to determine whether the testimony of the victim in a criminal case, by itself, can provide legally sufficient evidence to support a conviction. Appellant contends that if there is only the uncorroborated testimony of the victim to support a criminal prosecution, and the defendant declines to testify, there is effectively a "tie" between the two versions of what happened, and in those circumstances the burden of proof "beyond a reasonable doubt" dictates a judgment of acquittal. In her view, Hualapai Law & Order Code § 6.6 and the due process provision of the Hualapai Constitution, Article IX(d) and the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(8), support her analysis. We disagree.

The question presented in this case is a matter of first impression. Never before has this Court addressed the question whether a victim's testimony must be corroborated in order to sustain a conviction. We note, however, that the Hualapai Constitution, Article VI, section 12, and Hualapai Law & Order Code § 10.7 both direct this Court to give extraordinary deference to findings of fact made by the Tribal Court, and to review them only to determine whether they were "arbitrary or capricious." Although a decision about the sufficiency of evidence is a legal ruling rather than a review of facts, deference to the fact-finder does play a part. Specifically, we agree with the practice followed in federal courts, and hold that this Court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Deference to the trier of fact (the Tribal Court) is necessary in making such a determination because only the Tribal Court is in a position to observe the witnesses as they give their testimony, and therefore to evaluate their credibility and the weight that should be attached to their statements.

Appellant's position is that in addition to assessing the sufficiency of the evidence on this basis, this Court should insist that a victim's testimony be corroborated by other evidence in order for that evidence to serve as a legally sufficient basis for conviction. Nothing in the Hualapai Constitution, the Indian Civil Rights Act, or the Hualapai Law & Order Code supports Appellant's contention. The due process provisions of the Hualapai Constitution and the Indian Civil Rights Act are a guarantee of fundamental fairness. As it bears on the proof of guilt in a criminal case, fundamental fairness receives protection under Hualapai law through the requirement that evidence be "necessary, relevant,

reliable and probative” (Law & Order Code § 3.8), and defendants’ rights to secure compulsory attendance of witnesses and to confront the witnesses against them (Hualapai Constitution, Article VI, sec. 13(c); Law & Order Code § 5.16(B); Indian Civil Rights Act, 25 U.S.C. § 1302(a)(6)). There is no mention, either in the Hualapai Constitution, the Indian Civil Rights Act, or the Law & Order Code, of a defendant’s right of acquittal if the prosecution’s only evidence is the uncorroborated testimony of the victim.

Although this Court is not bound by federal, state, or common law, we note that in those systems a victim’s testimony is normally deemed sufficient to support a criminal conviction unless positive law (a statute or the constitution) specifies otherwise.<sup>1</sup> Historically, the major exception to that rule was the crime of rape, for which some courts carved out corroboration requirements without regard to positive law. *See, e.g., Davis v. State*, 120 Ga. 433 (Ga. 1904). In modern times, however, the corroboration requirement for rape cases has been largely abandoned in federal and state court decisions, because courts have realized that the requirement was grounded in harmful stereotypes and mistrust of women. *See Michelle J. Anderson, The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instruction on Campus Sexual Assault*, 84 B.U.L. Rev. 945, 968-974 (2004). We are unaware of any case in federal, tribal, or state court where a defendant has successfully argued that the absence of corroboration in a rape case or any other type of criminal case is a denial of due process.<sup>2</sup> A criminal defendant’s right to cross-examine the victim, along with the defendant’s right to introduce contrary evidence, are the tools the justice system provides to prevent conviction on the basis of erroneous or fabricated evidence. A corroboration requirement is not necessary for that purpose.

Furthermore, there are strong countervailing interests favoring allowance of conviction on the basis of a victim’s uncorroborated testimony. Requiring evidence beyond the simple statement of an accuser would create significant obstacles to prosecution in instances where police arrive after a crime has allegedly occurred (*i.e.*, police do not witness the crime) and the prosecutor must therefore rely on the victim’s testimony to build a case. Especially in situations where there are no witnesses to the alleged incident and physical evidence is unavailable or inconclusive, the court must be free to rely on the statements of credible witnesses against the defendant.

Allowing conviction on the basis of a victim’s uncorroborated testimony does not destroy the presumption of innocence. The trier of fact must still determine that the victim is credible and believable. If a defendant wishes to rely on the presumption of

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<sup>1</sup> Some states, for example, have enacted statutes requiring corroboration for the testimony of an accomplice or in cases of perjury. *See, e.g., Cal. Penal Code § 1111* (accomplice testimony); N.Y. Penal Code § 210.50 (testimony in perjury prosecution).

<sup>2</sup> In *Navajo Nation v. Wilbert Murphy*, 1988.NANN.000000I (Versus Law), the Navajo Nation Supreme Court indicated reluctance to sustain a conviction based solely upon an extra-judicial admission. However, the Court found sufficient corroborating circumstantial evidence to sustain the conviction in that case.

innocence, the defendant should cross-examine the victim to establish that the victim's testimony is in fact not believable.

**Conclusion and Order**

This Court finds that the Tribal Court did not deprive Schrum of her rights under the constitution and laws of the Hualapai Tribe in convicting her on the basis of Mahone's uncorroborated testimony. The judgment of the Hualapai Tribal Court is AFFIRMED.

IT IS SO ORDERED.

Entered this 5th day of January, 2012

A handwritten signature in cursive script that reads "Carole Goldberg".

BY:

Justice Carole Goldberg