



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**STATE v. PATRICK MICHAEL FERRERO  
CR-11-0127-PR**

**PARTIES:**

*Petitioner/Appellee:* The State of Arizona

*Respondent/Appellant:* Patrick Michael Ferrero

**FACTS:**

A grand jury indicted Ferrero on three counts of sexual conduct with a minor—two counts of sexual conduct with a minor under the age of 15, class 2 felonies and dangerous crimes against children, and one count of sexual conduct with a minor age 15 or older, a class 6 felony. Thereafter, the State filed a Notice of Intent to Admit Evidence Pursuant to *State v. Garner*, 116 Ariz. 443 (1977). In its notice, the State asserted it would present evidence of uncharged acts committed by Ferrero involving the minor, including having the minor “watch pornographic movies,” “[s]exually abus[ing] [the minor] on a continuing basis,” and “[c]onceal[ing] the abuse by providing [the minor] with money and activities without his parents’ permission.” Ferrero responded to the notice, arguing “admission of these uncharged acts . . . would violate [the] Arizona Rules of Evidence.” Ferrero argued admitting this evidence without subjecting it to Rule 404(c)’s evidentiary safeguards “would amount to a blanket admission of any and all uncharged acts by [him].”

At a pretrial conference and following a non-transcribed bench conference, the trial court granted the State’s motion to admit the evidence. Accordingly, in the State’s case in chief, the minor testified Ferrero molested him “[a]lmost every time” he was over at Ferrero’s house, which was “[e]very Friday or every other Friday,” during the years when the minor was 11 to 16. The molestations normally occurred the same way, according to the minor: Ferrero would ask the minor if he could spend the night at Ferrero’s home and then do some yard work for Ferrero the next morning, and the minor “would have to ask [his] parents for permission.” The minor and Ferrero would then sleep in the same bed and about 80% of the time Ferrero would molest the minor.

The minor further explained Ferrero gave him gifts, took him to movies, and showed him pornography. Ferrero also allowed the minor to shoot guns and drive Ferrero’s sand rail and truck, even though the minor’s parents did not approve of such activities. The minor continued to go to Ferrero’s house where the molestations would occur because he “was spoiled” -- “I got everything I wanted basically. I got to go out more than my sisters did. I felt like I was treated better than my sisters and I got more stuff.”

At trial, Ferrero admitted he engaged in sexual acts with the minor on four occasions when

the minor was 15 and 16 but denied having sex with the minor on any other occasions. Ferrero acknowledged giving the minor money but only for doing yard work and asserted that, with the minor's parents' permission, he had taken the minor riding on the sand rail. Although Ferrero denied showing the minor pornography, he testified he "did not stop" the minor from using Ferrero's computer to look at pornography. Ferrero also downloaded some pornography the minor had accessed on the computer.

The jury convicted Ferrero of all three counts. The trial court sentenced him to two consecutive 20-year prison terms for the class 2 felonies and lifetime probation for the class 6 felony. Ferrero timely appealed, arguing the trial court improperly allowed evidence of other acts against the same minor without meeting the requirements of Rule 404(c).

In a memorandum decision filed April 7, 2011, the court of appeals affirmed in part, reversed in part, and remanded. The court reversed the convictions and sentences for the two counts of sexual conduct with a minor under the age of 15 and remanded for a new trial on those counts. Relying on *State v. Garcia*, 200 Ariz. 471, 28 P.3d 327 (App. 2001), the court held that uncharged, other act evidence involving the same victim is subject to Rule 404(c)'s requirements.

The court affirmed Ferrero's conviction and sentence on the one count of sexual conduct with a minor age 15 or older because at trial Ferrero admitted he had committed this offense and therefore the admission of other acts evidence as to this count constituted harmless error.

The State seeks review of the court of appeals' memorandum decision.

#### **ISSUE AS FRAMED BY PETITIONER:**

Whether the court of appeals erroneously held that in criminal prosecutions for sexual offenses, the trial court may not admit evidence that the defendant committed uncharged acts against the same victim on different occasions, as "intrinsic evidence," independent of the prerequisites of Arizona Rule of Evidence 404(c).

In its order granting review, the Supreme Court requested the parties "to address whether evidence submitted pursuant to *State v. Garner*, 116 Ariz. 443 (1977), necessarily constitutes 'intrinsic evidence' and is therefore not subject to the requirements of Arizona Rule of Evidence 404(c)."

*This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*