

FILED
FIFTH JUDICIAL DISTRICT COURT
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WASHINGTON COUNTY
BY _____

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FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

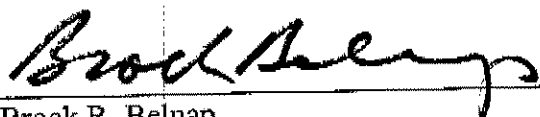
STATE'S PROPOSED JURY
INSTRUCTIONS

Criminal No. 061500526

Judge James L. Shumate

The State respectfully submits its proposed jury instructions. The State also respectfully requests that pursuant to Rule 19(a), the Court instruct the jury before opening statements on the elements and burden of proof for the alleged crime, and the definition of terms. Attached are copies of the State's proposed instructions in two forms: 1) with annotations and 2) without annotations.

Respectfully submitted this 4th day of September, 2007.


Brock R. Belnap
Washington County Attorney

Annotated

INSTRUCTION NO. _____**DEFINITION OF RAPE**

A person commits rape when the actor has sexual intercourse with another person without the other person's consent.

Intercourse without consent is all that is required for rape. Ignoring a person's "no," standing alone, may be sufficient for a conviction of rape, even without the use of threat or force. A person may commit rape whether or not the actor is married to the person.

Utah Code Ann. § 76-5-402

State v. Hammond, 2002 UT 92, ¶¶ 16-17 ("Intercourse without consent is all that is required for rape pursuant to section 76-6-402; no force is required. . . . Thus under Utah rape law, ignoring a victim's "no," standing alone, may be sufficient for a conviction for rape, even without the use or threat of force.").

INSTRUCTION NO. _____**CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER**

Every person, acting with the mental state required for the commission of rape who directly commits the rape, who solicits, requests, commands, encourages, or intentionally aids another person to engage in sexual intercourse without consent shall be criminally liable as a party for the rape.

Utah Code Ann. § 76-2-202.

State v. Green, 2005 UT 9, ¶ 56 & n. 9, 108 P.3d 710, 723 (upholding trial court's finding that a parent who consents to a child's wedding to an adult would be criminally liable as a party to rape under section 76-2-202.)

State v. Chaney, 1999 UT App 309, ¶¶ 50, 39, 989 P.2d 1101 (“[C]riminal liability [for rape of a child] attaches to one who solicits, requests, commands, encourages, or intentionally aids another and does so with the mental state required for the commission of the offense.”)

INSTRUCTION NO. _____**ABSENCE OF OTHER PARTIES**

In any prosecution in which an actor's criminal responsibility is based on the conduct of another, it is no defense that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense or is immune from prosecution.

You must not discuss or give any consideration as to why such other person is not being prosecuted in this trial or whether such person or persons have been or will be charged with crimes, prosecuted, convicted, or acquitted.

Utah Code Ann. § 76-2-203

INSTRUCTION NO.

THE MENTAL STATE REQUIRED FOR RAPE

The mental state necessary to support a conviction for rape is intentional, knowing, or reckless.

Utah Code Ann. § 76-2-102 (1953, as amended):

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility."

State v. Calamity, 735 P.2d 39, 43 (Utah 1987) (Because "the rape statute, section 76-5-402, does not require any specific mental state, the crime may be proved by an intentional, knowing, or reckless mental state.")

INSTRUCTION NO.**ELEMENTS OF THE OFFENSE OF RAPE AS AN ACCOMPLICE**

To convict the defendant as a party to the crime of rape, you must find from the evidence, beyond a reasonable doubt, all of the following elements of that crime:

1. That the defendant:
 - a. intentionally, knowingly, or recklessly solicited, requested, commanded, or encouraged another –
 - i. to have sexual intercourse
 - ii. with Elissa Wall without consent; or
 - b. intentionally aided another –
 - i. to have sexual intercourse
 - ii. with Elissa Wall without consent; and
2. Allen Steed had sexual intercourse with Elissa Wall without consent.

If you do not find from the evidence, beyond a reasonable doubt, all of the foregoing elements, you must find the defendant not guilty of rape as an accomplice.

Utah Code Ann. § 76-2-202
Utah Code Ann. § 76-5-402
State v. Chaney, 1999 UT App 309, ¶¶ 50-51
State v. Calamity, 735 P.2d 39, 43 (Utah 1987)
Utah Code Ann. § 76-2-102 (1953, as amended)

INSTRUCTION NO. _____

LACK OF CONSENT

An act of sexual intercourse is without consent of a person under any, all, or a combination of the following circumstances:

1. The person expresses lack of consent through words or conduct; or
2. The person was 14 years of age or older, but younger than 18 years of age, and the actor was more than three years older than the person and enticed the person to submit or participate.
3. The person was younger than 18 years of age and at the time of the offense the actor occupied a position of special trust in relation to the person.

You are not prevented from determining that circumstances outside those listed above amount to lack of consent. You may also apply the common, ordinary meaning of lack of consent to determine whether a person consented to sexual intercourse. You may consider the totality of the facts and circumstances in making your determination regarding lack of consent.

Utah Code Ann. § 76-5-406(1), (10), (11).

State v. Salazar, 2005 UT App 241 ¶¶ 8-10 (“We reiterate here that section 76-5-406 merely defines specific circumstances in which consent does not exist. As such, it is not a shield for criminal defendants who might be able to characterize their conduct as falling outside the statute.... [F]acts satisfying one or more prongs of section 76-5-406 establish lack of consent as a *matter of law*. Fact finders are not, however, precluded from determining that circumstances outside those defined in section 76-5-406 may still amount to lack of consent in any particular case.”) (emphasis in original, citations omitted). *Id.* at ¶ 10 (“lack of consent” can be established “under either Utah Code section 76-5-406[] or the common, ordinary meaning of lack of consent.”).

State v. Meyers, 606 P.2d 250, 252 (Utah 1980) (“consent is a matter ... particularly within the province of the jury to determine.”).

State v. Gibson, 908 P.2d 352, 356 (UT App 1995) (“in determining whether the defendant’s conduct constituted enticement, we look to the totality of the facts and circumstances.”)

INSTRUCTION NO. _____

DEFINITIONS RELATED TO CONSENT

“Entice” consists of some acts or words intended to cause a person to do something that person would not otherwise do. Entice includes to wrongfully lure, induce, incite, or persuade a person to do a thing. Entice includes the use of improper psychological manipulation to influence the will of a minor or to persuade against the minor’s will or better judgment. Considerations of age, development, and relationship to each other, sophistication or lack thereof and all other facts and circumstances shown by the evidence enter into a determination of whether a minor was enticed. The application of force, violence, or threats of retaliation in the future are not necessary to show enticement.

“Position of Special Trust” means that position occupied by a person in a position of authority who, by reason of that position, is able to exercise undue influence over a person under 18 years of age, and includes but is not limited to a teacher, counselor, or religious leader.

State v. Scieszka, 897 P.2d 1224, 1228 (Utah Ct. App. 1995) (“The word ‘entice’ consists of some acts or words intended to cause a person to do something the other person would not otherwise do.... Considerations of age, mental development, relationship to each other, sophistication or lack thereof and all other factors and circumstances shown by the evidence enter into a determination whether a child was enticed.”).

State v. Gibson, 908 P.2d 352, 356 & n. 3 (Utah App. 1995). (“Black’s Law Dictionary defines ‘entice’ as ‘to wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax, or seduce. To lure, induce, incite, or persuade a person to do a thing.’ This definition is consistent with the statutory purpose in that it describes the use of *improper* psychological manipulation to influence the will of another.”) (citations omitted, emphasis in original).

Id. at n. 3 (Entice includes “some acts or words intended to cause a person to do something the other person would not otherwise do” and “may mean ... to persuade against one’s will or better judgment ...”) (citations omitted).

Utah Code Ann. § 76-5-406(11) (“entice” occurs “under circumstances not amounting to the force or threat required under Subsection (2) or (4).”). Subsections (2) and (4) require physical violence or threats of retaliation.

Utah Code Ann. § 76-5-404.1(4)(h) (definition of position of special trust)

INSTRUCTION NO. _____

RELIGIOUS BELIEFS NO DEFENSE TO CRIMINAL ACTS

The Constitution protects religious beliefs. But, people whose actions violate the laws regarding rape, consent, and accomplice liability are not excused from compliance with those laws because of their religious beliefs or opinions.

Employment Division, Department of Human Resources v. Smith, 494 U.S. 872, 878-79 110 S. Ct. 1595, 1599-1600, 108 L.Ed.2d 876 (1990) (“We have never held that an individual’s religion beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition ... ‘Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs.’”).

State v. Green, 2004 UT 76 ¶ 18-19 (The Utah Supreme Court “is unable to disregard the United State’s Supreme Court holding in *Reynolds*” that while laws “cannot interfere with mere religious belief and opinions, they may with practices.” Otherwise, “professed doctrines of religious belief [would be] superior to the law of the land, and in effect ... permit every citizen to become a law unto himself.”) (citing *Reynolds v. United States*, 98 U.S. 145, 145, 162067 (1878) (alterations in *Green*)).

INSTRUCTION NO. _____

NO LAWFUL MARRIAGE

A lawful marriage cannot occur between first cousins or when one of the parties is younger than age fifteen.

Utah Code Ann. § 30-1-1(1)

“The following marriages are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate: ... (d) marriages between first cousins....”

Utah Code Ann. § 30-1-2

“The following marriages are prohibited and declared void: ... (3) ... beginning May 3, 1999, when the male or female is under 16 years of age at the time the parties attempt to enter into the marriage; however, exceptions may be made for a person 15 years of age, under conditions set forth in accordance with Section 30-1-9.”

Utah Code Ann. § 30-1-9(2)(b)

“If the male or female is 15 years of age, the minor and the parent or guardian of the minor shall obtain a written authorization to marry from: [a juvenile judge] or [court commissioner].”

Un-annotated

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CERTIFICATE OF DELIVERY

I hereby certify that, on the 4th day of September, 2007, I caused a true and correct copy of the foregoing STATE'S PROPOSED JURY INSTRUCTIONS to be served as follows:

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