

CR1615 Consent.

(DEFENDANT'S NAME) has been charged with (name of offense). The prosecution must prove beyond a reasonable doubt that [(VICTIM'S NAME)][(MINOR'S INITIALS)] did not consent to the alleged sexual conduct.

Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn at any time before or during sexual activity.

The alleged sexual conduct is without consent of [(VICTIM'S NAME)] [(MINOR'S INITIALS)] under any, all, or a combination of the following circumstances:

[(VICTIM'S NAME)][(MINOR'S INITIALS)] expressed lack of consent through words or conduct;]

[(DEFENDANT'S NAME) overcame the victim through the application of physical force or violence;]

[(DEFENDANT'S NAME) overcame ~~the victim-~~[(VICTIM'S NAME)][(MINOR'S INITIALS)] through concealment or by the element of surprise;]

[(DEFENDANT'S NAME) coerced ~~the victim-~~[(VICTIM'S NAME)][(MINOR'S INITIALS)] to submit by threatening immediate or future retaliation against [(VICTIM'S NAME)][(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)][(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to carry out the threat;]

[(DEFENDANT'S NAME) knew [(VICTIM'S NAME)][(MINOR'S INITIALS)] was unconscious, unaware that the act was occurring, or was physically unable to resist;]

[(DEFENDANT'S NAME) knew that as a result of mental illness or defect, or for any other reason [(VICTIM'S NAME)][(MINOR'S INITIALS)] was incapable at the time of the act of either understanding the nature of the act or of resisting it;]

[(DEFENDANT'S NAME) knew that [(VICTIM'S NAME)][(MINOR'S INITIALS)] ~~submitted or~~ participated because [(VICTIM'S NAME)][(MINOR'S INITIALS)] incorrectly believed that (DEFENDANT'S NAME) was ~~[(VICTIM'S NAME)][(MINOR'S INITIALS)]'s spouse~~ someone else;]

[(DEFENDANT'S NAME) intentionally impaired [(VICTIM'S NAME)][(MINOR'S INITIALS)]'s power to understand or control [(VICTIM'S NAME)][(MINOR'S INITIALS)]'s conduct by giving [(VICTIM'S NAME)][(MINOR'S INITIALS)] a substance without [(VICTIM'S NAME)][(MINOR'S INITIALS)]'s knowledge;]

[(MINOR'S INITIALS) was younger than 14 years old at the time of the act;]

[At the time of the act, (MINOR'S INITIALS) was younger than 18 years old and (DEFENDANT'S NAME) was (MINOR'S INITIALS)'s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to (MINOR'S INITIALS);]

[(MINOR'S INITIALS) was 14 years old or older, but younger than 18 years old, and (DEFENDANT'S NAME) was more than three years older than (MINOR'S INITIALS) and enticed or coerced (MINOR'S INITIALS) to submit or participate, under circumstances not amounting to physical force or violence or the threat of retaliation;]

[(DEFENDANT'S NAME) was a health professional or religious counselor who committed the act under the guise of providing professional diagnosis, counseling or treatment, and at the time of the act [(VICTIM'S

NAME)][(MINOR'S INITIALS)] reasonably believed the act was for professionally appropriate reasons, so that [(VICTIM'S NAME)][(MINOR'S INITIALS)] could not reasonably be expected to have expressed resistance.]

In deciding lack of consent, you are not limited to the circumstances listed above. You may also apply the common, ordinary meaning of consent to all of the facts and circumstances of this case.

References

Utah Code § 76-5-406

Utah Code § 76-5-407

State v. Barela, 2015 UT 22

State v. Thompson, 2014 UT App 14

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Last Revised – 06/03/2020