

**ROBBERY  
SECOND DEGREE  
(C felony)  
(Displays Weapon)  
PENAL LAW 160.10(2)(b)  
(Committed on or after Sept. 1, 1973)**

*[NOTE: Before instructing a jury on any specific robbery charge, read once the introductory Robbery charge found at the beginning of this chapter.]*

The \_\_\_ count is Robbery in the Second Degree.

Under our law, a person is guilty of Robbery in the Second Degree when that person forcibly steals property and when in the course of the commission of the crime [*or of immediate flight therefrom*], that person [*or another participant in the crime*] displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.<sup>1</sup>

The element that the person “[display] what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm” does not require the People to prove that the object displayed was actually a firearm. What the People are required to prove is that the person consciously displayed, or manifested the presence of, something that could reasonably be perceived as a pistol, revolver, rifle, shotgun, machine gun or other firearm and that the person to whom the item was displayed or manifested, perceived it as a pistol, revolver, rifle, shotgun, machine gun or other firearm.<sup>2</sup>

In order for you to find the defendant guilty of this crime, the

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<sup>1</sup> The words “rifle, shotgun, machine gun” were added effective September 1, 1973.

<sup>2</sup> See *People v Lopez*, 73 NY2d 214 (1989); *People v Baskerville*, 60 NY2d 374 (1983).

People are required to prove, from all the evidence in the case beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), forcibly stole property from (specify); and
2. That in the course of the commission of the crime [*or* of immediate flight therefrom], the defendant [*or* another participant in the crime] displayed what appeared to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Robbery in the Second Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Robbery in the Second Degree as charged in the \_\_\_ count.