

**CRIMINAL USE OF A FIREARM
IN THE SECOND DEGREE
(Displays weapon)
Penal Law § 265.08(2)
(Committed on or after Aug. 12, 1980)**

The (*specify*) count is Criminal Use of a Firearm in the Second Degree.

Under our law, a person is Guilty of Criminal Use of a Firearm in the Second Degree when he commits any Class C violent felony offense and he or she displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

The following term used in that definition has a special meaning:

A CLASS C VIOLENT FELONY OFFENSE includes (*specify name of felony or felonies and define*).

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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, the following element:

¹See *People v Lopez*, 73 NY2d 214 (1989); *People v Baskerville*, 60 NY2d 374 (1983).

That on or about (date), in the county of (county), the defendant, (defendant's name), committed (specify Class C violent felony offense) and displayed what appeared to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

If you find the People have proven that element beyond a reasonable doubt, you must find the defendant guilty of this crime.

If you find the People have not proven that element beyond a reasonable doubt, you must find the defendant not guilty of this crime.