

**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.¹

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:

¹ See *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.