**ROBBERY IN THE SECOND DEGREE

(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 (*specify*) 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.1

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.2

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

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

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

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.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

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