

**CRIMINAL USE OF A FIREARM
FIRST DEGREE
(B FELONY)
(Displays weapon)
PENAL LAW 265.09(1)(b)
(Committed on or after Nov. 1, 1996)**

The _____ count is Criminal Use of a Firearm in the First Degree.

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

The term, Class B violent felony offense, used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

CLASS B 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 the

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

evidence in the case, beyond a reasonable doubt, the following element:

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

Therefore, if you find that the People have proven that element beyond a reasonable doubt, you must find the defendant guilty of the crime of Criminal Use of a Firearm in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven that element beyond a reasonable doubt, you must find the defendant not guilty of the crime of Criminal Use of a Firearm in the First Degree as charged in the _____ count.