§ 450.40 Appeal by people from trial order of dismissal.

1. An appeal by the people from a trial order of dismissal, as authorized by subdivision two of section 450.20, may, as indicated by section 290.10, be based either (a) upon the ground that the evidence adduced at the trial was legally sufficient to support the count or counts of the accusatory instrument dismissed by the order, or (b) upon the ground that, though not legally sufficient, such evidence would have been legally sufficient had the court not erroneously excluded admissible evidence offered by the people.

2. If the appeal is based upon the ground specified in paragraph (b) of subdivision one, and if the appellate court determines that the evidence unsuccessfully offered by the people was improperly excluded, and if at the trial the people made on offer of proof with respect thereto pursuant to subdivision three of section 290.10, the appellate court, in making its determination whether the people's evidence would have been legally sufficient had it not been for the improper exclusion, must treat the excluded evidentiary matter as it is summarized in the offer of proof as evidence constituting a part of the people's case.