4.30. Evidence of Dangerous Drugs Destroyed Pursuant to Court Order (CPL 60.70)

(1) The destruction of dangerous drugs, pursuant to the provisions of CPL article 715, shall not preclude the admission on trial or in a proceeding in connection therewith of testimony or evidence where such testimony or evidence would otherwise have been admissible if such drugs had not been destroyed.

(2) Notwithstanding subdivision one, the failure to follow CPL article 715 does not preclude admission of testimony as to the nature and amount of the drugs seized if the prosecution has sufficiently explained the destruction, the drugs were not destroyed in bad faith, and the defendant is not prejudiced.

Note

Subdivision (1) restates verbatim CPL 60.70, except where the statutory language refers to "article seven hundred fifteen hereof," this rule inserts the appropriate reference, namely, "CPL article 715."

Subdivision (2) assumes that the normal prerequisites to the admissibility of drugs, such as chain of custody, can be met but that at some point the drugs themselves have been destroyed. In that instance, *People v Reed* (44 NY2d 799 [1978]) allows for testimony about the drugs if the criteria stated in the rule are fulfilled:

> "[T]he destruction of the contraband by the police custodian was due to a clerical error which led him to reasonably believe that the case had been dismissed. The prosecution has thus sufficiently explained the destruction, and there is no indication and, indeed, no claim of bad faith. Additionally significant is the absence of any prejudice to the defendant as a result of the destruction of the substance prior to trial. . . . [T]he drugs were available to defendant for independent analysis or measurement for nearly two years, and were not destroyed until just prior to trial. At no time during this long period that the police had the substance did defendant seek to have the drugs examined; instead, he simply requested a copy of the police laboratory report. In light of these facts, the decision to allow testimony as to the nature and amount of the material seized did not constitute error" (*Reed* at 800-801).