

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Appellant,

v.

MARIA SOCORRO CHACON,

Defendant and Respondent.

B164649

(Los Angeles County
Super. Ct. No. BA219058)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT*

It is ordered that the opinion filed on April 14, 2004, as modified on April 20, 2004, be further modified in the following particulars:

1. On page 7, the last sentence preceding roman numeral II, beginning “We conclude that in these circumstances” is deleted.
2. On page 7, the following four paragraphs are added immediately preceding roman numeral II:

Chacon relies on *People v. Rawlings* (1974) 42 Cal.App.3d 952 for the proposition that a pretrial evidentiary ruling may not be reviewed on a People’s appeal. *Rawlings* involved the pretrial exclusion of prosecution evidence which led to dismissal of the case. The appellate court held the People could not appeal the pretrial ruling. Chacon’s argument is based on a “judicially created” rule providing that “in limine rulings are not

binding because the trial court has the power to reconsider, modify or set aside its order at any time prior to the submission of the cause.” (*People v. Yarbrough, supra*, 227 Cal.App.3d at p. 1655.) *Rawlings* has not been followed on this point. (*In re Ricardo C.* (1995) 37 Cal.App.4th 431, 437 [declining to follow *Rawlings* and quoting *Yarbrough, supra*, 227 Cal.App.3d at p. 1654, for point that *Rawlings* confused reviewability with appealability].)

A well-recognized exception to the rule that in limine rulings are not reviewable on a People’s appeal applies here. It was established by the *Dewberry-Angeles-Mills* line of cases “upholding review of an adverse evidentiary ruling on an appeal by the People where that ruling renders the People unable to proceed to trial. (See *People v. Dewberry, supra*, 40 Cal.App.3d 175, 181-185; *People v. Mills, supra*, 164 Cal.App.3d 652, 655; *People v. Angeles, supra*, 172 Cal.App.3d 1203, 1209-1211.)” (*People v. Yarbrough, supra*, 227 Cal.App.3d at p. 1655.) We agree with the reasoning of the *Dewberry* court which was quoted with approval in *Yarbrough*: “‘It would have little meaning if the court could consider only the technical correctness of the order of dismissal but not review the reason behind it, especially where the two are intertwined.’ (40 Cal.App.3d at p. 182.)” (227 Cal.App.3d at pp. 1655-1656.)

Chacon glosses over a distinction between different kinds of in limine motions. She characterizes the motion in limine at issue here as a typical evidentiary challenge which must be renewed at trial to be preserved for appeal. In *People v. Morris* (1991) 53 Cal.3d 152, overruled on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, the Supreme Court ruled that no further objection at trial is required where there is a specific legal objection to a particular, identifiable body of evidence which was clearly and unequivocally denied in a ruling by the trial court on a motion in limine at a time when the trial court could give fair consideration to the admission of the evidence in its context. (*Id.* at pp. 189-190.) Where these criteria are met, the issue is preserved for appeal under Evidence Code section 353. (*Id.* at p. 190.) Here, the People objected to evidence and instructions on the entrapment by estoppel defense on the ground that it is not legally applicable; the objection was to a particular, identifiable body of evidence; and the

motion was made at a time the trial court could determine the question in its appropriate context.

We conclude that in these circumstances, appellate review of the order of dismissal and the ruling on the in limine motion is appropriate. We turn to the merits of the ruling.

There is no change in the judgment.

Respondent's petition for rehearing is denied.

*EPSTEIN, Acting P.J., HASTINGS, J., CURRY, J.