



ATTORNEY FOR APPELLANT

Kurt A. Young
Nashville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Veronica C. Reyes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 6, 2022
Court of Appeals Case No.
21A-CR-2646

Appeal from the
Marion Superior Court

The Honorable
Clark Rogers, Judge

Trial Court Cause No.
49D25-1710-F6-38523

Vaidik, Judge.

- [1] Veronica C. Reyes appeals her convictions for Class A misdemeanor resisting law enforcement and Class C misdemeanor reckless driving, arguing the trial court erred in giving final instructions before, instead of after, closing arguments. In support, she notes Indiana Code section 35-37-2-2 provides jury instructions come after closing arguments and that “[h]istorically, that order of

trial has been recognized and applied in Indiana.” Appellant’s Br. p. 12 (citing *Rogers v. State*, 315 N.E.2d 707 (Ind. 1974)).

[2] As Reyes acknowledges, however, since 2003 the Indiana Jury Rules have afforded trial courts the discretion to give final instructions before or after closing arguments. Jury Rule 26(a) provides: “The court may, in its discretion, give some or all final instructions before final arguments, and some or all final instructions after final arguments.” *See also* Ind. Trial Rule 51(B) (providing final instructions shall be given “in accordance with Jury Rule 26”). Reyes doesn’t dispute that the trial and jury rules “trump statutes on matters of procedure.” *In re M.S.*, 140 N.E.3d 279, 284 (Ind. 2020). She claims, however, that given Section 35-37-2-2 and historical practice, the presumption should be that final instructions are given last and trial courts must provide a reason for giving them before closing arguments.

[3] But that is not what Jury Rule 26(a) says. The rule gives trial courts the option to give final instructions before or after closing arguments; there is no presumption. The Indiana Supreme Court could have written a presumption into Jury Rule 26(a), but it did not.

[4] There are also good reasons to give final instructions before or after closing arguments. Reading final instructions before closing helps the jury better understand counsels’ arguments about how the law applies to the facts. Further, there would be no guessing during closing as to what the instructions will be. The downside is that the last thing the jury would hear is the State’s rebuttal

argument, which might have a greater impact on it because of “recency bias.” But as the trial court did here, courts could lessen any impact by addressing housekeeping matters after the State’s rebuttal argument. That said, because Jury Rule 26(a) affords trial courts the option to give final instructions before or after closing arguments, a court can do either without abusing its discretion. We therefore affirm Reyes’s convictions.

[5] Affirmed.

Crone, J., and Altice, J., concur.