

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

PROMULGATION OF AMENDMENTS TO THE
MINNESOTA RULES OF CRIMINAL PROCEDURE

ORDER

WHEREAS, in its report dated July 27, 1999, the Supreme Court Advisory Committee on the Rules of Criminal Procedure recommended certain amendments to the Minnesota Rules of Criminal Procedure; and

WHEREAS, by order dated September 27, 1999, this Court established a November 10, 1999, deadline for submitting written comments on the proposal; and

WHEREAS, on November 17, 1999, the Supreme Court held a hearing on the proposed amendments; and

WHEREAS, the Supreme Court reviewed the proposal and submitted comments, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated to be effective on March 14, 2000.
2. The attached amendments shall apply to all trials commencing on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.


Dated: February 11, 2000

BY THE COURT:

OFFICE OF
APPELLATE COURTS

FEB 11 2000

FILED


Kathleen A. Blatz
Chief Justice

MINNESOTA RULES OF CRIMINAL PROCEDURE

Rule 26.03, subd. 11. Order of Jury Trial The order of a jury trial shall be substantially as follows:

- a. The jury shall be selected and sworn.
- b. The court may deliver preliminary instructions to the jury.
- c. The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts the prosecuting attorney expects to prove.
- d. The defendant may make an opening statement to the jury, or may make it immediately before offering evidence in defense. The statement shall be confined to a statement of the defense and the facts the defendant expects to prove in support thereof.
- e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.
- f. The defendant may offer evidence in defense.
- g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon the party's original case.
- h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.
- i. The defendant may then make a closing argument to the jury.
- j. The prosecution may then make a rebuttal argument to the defense closing argument. The rebuttal must be limited to a direct response to those matters raised in the defendant's closing argument.
- j.k. On the motion of the ~~prosecution~~ defendant, the court may permit the ~~prosecution~~ defendant to reply in ~~rebuttal~~ surrebuttal if the court determines that the ~~defense~~ prosecution has made in its ~~closing rebuttal~~ argument a misstatement of law or fact or a statement that is inflammatory or prejudicial. The ~~rebuttal~~ surrebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.
- l. At the conclusion of the arguments the court shall allow the parties an opportunity, outside the presence of the jury and on the record, to make any objections they may have to the content or manner of the other party's argument based upon existing law and to request curative instructions. This rule does not limit the right of any party under existing law to make appropriate objections and to seek curative instructions at any other time during the closing argument process.
- k m. The court shall charge the jury.
- l n. The jury shall retire for deliberation and, if possible, render a verdict.

Paragraph 59 of the Advisory Committee comments is amended as follows:

Rule 26.03, subd. 11 (Order of Jury Trial) substantially continues the order of trial under existing practice. (See Minn. Stat. § 546.11 (1971).) The order of closing argument, under sections "h", "i", ~~and~~ "j", "k", and "l" of this rule reflects a change. The prosecution argues first, then

the defense. The court may then permit the prosecution limited rebuttal, if the defense in its argument made a misstatement of law or fact or a statement that is inflammatory or prejudicial. The prosecution is then automatically entitled to rebuttal argument. However, this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument. Allowance of the rebuttal argument to the prosecution should result in a more efficient and less confusing presentation to the jury. The prosecution will only need to address those defenses actually raised by the defendant rather than guessing, perhaps wrongly, about those defenses. In the event that the prosecution engages in improper rebuttal, paragraph "k" of the rule provides upon motion, for a limited right of rebuttal to the defendant to address misstatements of law or fact and any inflammatory or prejudicial statements. The court has the inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in the earlier arguments. It is the responsibility of the court to ensure that final argument to the jury is kept within proper bounds. ABA Standards for Criminal Justice, The Prosecution Function 3-5.8 and The Defense Function 4-7.8 (1985). If the argument is sufficiently improper, the trial judge should intervene even without objection from opposing counsel. See *State v. Salitros*, 499 N.W.2d 815 (Minn. 1993); *State v. White*, 295 Minn. 217, 203 N.W.2d 852 (1973).