

IN THE SUPREME COURT OF THE STATE OF DELAWARE	
GEORGE A. KISER,	§
	§ No. 542, 1999
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK99-01-0013
Plaintiff Below,	§ through 0016
Appellee.	§

Submitted: August 29, 2000
Decided: October 26, 2000

Before **HOLLAND, BERGER** and **STEELE**, Justices.

O R D E R

This 26th day of October, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

(1) George A. Kiser appeals from his convictions, following a jury trial, on four counts of delivery of a narcotic Schedule I controlled substance and two counts of second degree conspiracy. Kiser argues that the trial court abused its discretion in denying his request for a continuance on the morning of trial. He complains that, by denying the continuance, the court prevented Kiser from exercising his constitutional right to self-representation. We find no merit to this argument.

(2) Kiser was arrested in October 1997, after selling crack cocaine to undercover police officers on four occasions that summer. In April 1998, after having been represented by a public defender, Kiser filed the first of several

motions to proceed *pro se*. Some of his motions were granted; some were withdrawn. At his final case review in April 1999, the court granted Kiser's latest motion to proceed *pro se*, but ordered the public defender to remain as standby counsel.

(3) Five days later, on the morning of trial, Kiser requested a continuance. He wanted time to review police reports and discovery, which he claimed not to have received. Both the prosecutor and Kiser's standby counsel disputed Kiser's claim that he had not received the documents. Nonetheless, the trial court recessed for an extended lunch break (over two hours) to give Kiser time to read the twenty pages of police reports.

(4) After the break, Kiser told the court he was ready to proceed. The prosecutor gave his opening statement and the court then asked Kiser if he wished to make an opening statement. Kiser responded, "Well, Your Honor, I would like to step down and have [the public defender] represent me." The public defender gave an opening statement and continued to represent Kiser throughout the trial.

(5) Kiser argues that the trial court erred when it granted him a long lunch recess instead of the continuance he requested. He claims that the court's decision prevented him from exercising his constitutional right to represent himself. Since the decision caused him such significant prejudice, Kiser says that it constitutes an abuse of discretion.

(6) The decision whether to grant a continuance will not be disturbed on appeal unless it was "clearly unreasonable or capricious."¹ There is nothing in this record to suggest that Kiser had any difficulty reading twenty pages of police reports during the two hour lunch break. To the contrary, since Kiser told the

¹ *Bailey v. State*, Del. Supr., 521 A.2d 1069,1088 (1987).

trial court that he was ready to proceed after lunch, one could infer that the time he was given was sufficient. Likewise, there is nothing to suggest that the denial of a continuance forced Kiser to abandon his plan to represent himself. Kiser simply told the court that he wanted the public defender to represent him. Kiser had vacillated several times during the months before trial and made his final decision – to accept representation – at the last moment. He did so unequivocally and without making any reference to concerns about the alleged lack of discovery or any need for more time to prepare for trial. In short, there is no record support for Kiser’s claim, raised for the first time on appeal, that his decision on representation was involuntary. Accordingly, we find no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice