

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA            )  
  )  
v.    )        No. 4:19CR00031 DPM  
  )  
GILBERT R. BAKER                         )

**RESPONSE IN OPPOSITION TO**  
**MOTION TO AMEND CONDITIONS OF RELEASE**

The United States of America, by and through its attorney, Michael Gordon, Attorney for the United States Acting Under Authority Conferred by 28 U.S.C. § 515, for the Eastern District of Arkansas, and Julie Peters and Pat Harris, Assistant United States Attorneys, respectfully submits this Response in Opposition to defendant GILBERT BAKER’s Motion to Amend Conditions of Release. Doc. No. 43.

**I. Background**

On January 10, 2019, a federal grand jury in the Eastern District of Arkansas returned an indictment charging defendant GILBERT BAKER with violations of 18 U.S.C. § 371 (conspiracy); 18 U.S.C. § 666 (bribery concerning program receiving federal funds); and 18 U.S.C. §§ 1343 & 1346 (honest services wire fraud). Doc. No. 1. On January 24, 2019, BAKER appeared for Plea and Arraignment, and United States Magistrate Judge Patricia S. Harris entered an Order Setting BAKER’s Conditions of Release. Doc. No. 13. Among those conditions, as relevant here, BAKER was required to: (1) not use alcohol at all; (2) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer; and (3) participate in a program of inpatient and outpatient substance abuse therapy and counseling. Doc. No. 13, Paragraphs 7(l), 7(n), 7(o). Because the parties jointly stipulated that those conditions were appropriate, the United States did not proffer evidence in support of those conditions at the hearing. BAKER now requests

that the Court amend his conditions of release to allow him to use alcohol (but not excessively) and to eliminate the requirement that he submit to testing for prohibited substances. Doc. No. 43. BAKER also suggests that the Court add his wife as a third party custodian to report to the Court if he uses alcohol excessively. *Id.* The Court requested that the United States respond to BAKER's motion, and the United States now proffers the below evidence in opposition to the proposed changes to BAKER's conditions of release.

## **II. Applicable Law**

A defendant's "history and characteristics," including the defendant's "history relating to drug or alcohol abuse," are among the factors a court must consider in determining whether any condition or combination of conditions of bond will reasonably assure the defendant's appearance and the safety of the community. 18 U.S.C. § 3142(g)(3)(a). A court must also assess "the nature and seriousness of the danger to the community that would be posed by the defendant's release." *Id.* at § 3142(g)(4).

## **III. BAKER's History of Alcohol and Methamphetamine Abuse Render Him a Danger to the Community, Absent Pretrial Testing, Treatment, and Abstinence from Alcohol and Controlled Substances**

As set forth below, the Court's bond conditions prohibiting BAKER from using alcohol and subjecting him to testing and treatment are necessary to reasonably assure the safety of the community. BAKER has a prior conviction for driving while intoxicated. His impairment endangered other motorists. BAKER has a recent history of extended methamphetamine and alcohol use following this DWI. Further, BAKER has failed to abide by this Court's conditions while on bond. Even with the possibility of incarceration hanging over him, BAKER preferred to use alcohol over complying with this Court's conditions. This supports the need for BAKER to

continue abstaining from alcohol. The use of alcohol is also inconsistent with remaining in recovery following BAKER's inpatient treatment for methamphetamine and alcohol abuse.

**A. BAKER Has Prior Convictions for Driving While Intoxicated and Refusal to Submit to a Chemical Test**

On September 27, 2016, BAKER pleaded guilty to Driving While Intoxicated and Refusal to Submit to a Chemical Test, in Faulkner County Case No. CWC-16-4885, stemming from a traffic stop on August 26, 2016. Court documents reflect that prior to the traffic stop, BAKER was observed by law enforcement weaving within his lane and straddling the center dotted line. An officer described BAKER as having "bloodshot, watery, glassy eyes," "slurred speech," "uncooperative," "swaying while standing," with the "odor of intoxicants on his breath," "exaggerated responses and behavior" and "disheveled clothing." *See* Affidavit for Search Warrant filed-marked August 31, 2016, in Case No. CWC-16-4885. At the time of the traffic stop, in addition to refusing to submit to a chemical test, BAKER stated that he had had "nothing to drink." *Id.* After being *Mirandized*, BAKER "admitted to consuming one drink." *Id.* In fact, the Arkansas State Crime Laboratory reports from BAKER's blood draw reflect that he was under the influence of "methamphetamines" and had a blood alcohol level of 0.149, which is approximately 86% above the legal limit. *See* ASCL Case No. 2016-020572, original and supplemental reports on September 14, 2016 and September 26, 2016.

**B. BAKER Has a Recent History of Prolonged Methamphetamine and Alcohol Use**

On January 10, 2019, Individual G, a close personal and professional associate of BAKER's, provided information to the United States that BAKER smoked methamphetamine "on occasion." Individual G admitted to supplying BAKER with methamphetamine beginning in

2014, and continuing through December 2018. On February 25, 2019, Individual G elaborated that the methamphetamine was available to BAKER at Individual G's home. BAKER had independent access to the methamphetamine, but Individual G and BAKER smoked methamphetamine together two to three times a month. Sometimes BAKER paid Individual G for the methamphetamine, and sometimes he did not.

Additionally, during the course of this investigation, law enforcement surveilled BAKER on occasion. More recent surveillances revealed the following information relating to BAKER's alcohol consumption and corroborate his contact with Individual G, who admitted supplying BAKER methamphetamine during this time.

- On August 28, 2017, at approximately 9:30 a.m., BAKER purchased a bottle of alcohol at Maumelle Wine & Spirits. BAKER then went through the drive-thru of Tropical Smoothie, and went to Individual G's house, where he remained until approximately 12:30 p.m.
- On September 14, 2017, at approximately 1:15 p.m., BAKER left Individual G's residence. BAKER was then observed speaking to students on the UCA campus, while smelling strongly of rum.
- On October 31, 2017, at approximately 7:30 p.m., BAKER made a purchase at Lake Liquor. BAKER then drove directly to Individual G's residence and entered.
- On November 16, 2017, at approximately 6:10 p.m., BAKER was observed leaving his office. While en route to his residence, BAKER pulled into a Valero and threw a 100ML bottle of Vodka into the trash.
- On April 26, 2018, at approximately 10:50 a.m., BAKER drove to Individual G's residence and entered. At approximately 12:25 p.m., BAKER left Individual G's residence and drove to the Valero, and then to Oscar's Liquor, which he briefly entered.
- On April 30, 2018, at approximately 3:00 p.m., BAKER drove to Oscar's Liquor and entered. BAKER then drove to Individual G's residence and entered.
- On May 14, 2018, at approximately 5:00 p.m., BAKER drove to Oscar's Liquor, and exited with a bottle in a bag. BAKER then drove to Individual G's residence where he did landscaping work.

- On May 17, 2018, at approximately 5:00 p.m., BAKER entered Individual G's residence. BAKER left the residence approximately an hour later. BAKER returned briefly, then left again and drove to Lake Liquor.
- On December 20, 2018, at approximately 2:31 p.m., BAKER drove to Lake Liquor. BAKER then drove to Individual G's house and entered.

Certainly, BAKER was not prohibited from buying alcohol during this time or fraternizing with Individual G. However, in context, these surveillances corroborate that BAKER's current drug and alcohol conditions are reasonable in light of his regular history of methamphetamine and alcohol use during the approximately 4.5 years leading up to BAKER's Indictment.

**C. BAKER Has a History of Noncompliance with His Pretrial Conditions Relating to Alcohol**

BAKER has twice violated this Court's pretrial conditions with respect to one of the conditions he now seeks to have removed, to "not use alcohol at all." Doc. No. 13, Paragraph 7(1). Specifically, on April 20, 2019, BAKER submitted a urine specimen, which tested and confirmed positive for alcohol. The Pretrial Services Report states, "The defendant reported he tested positive for alcohol as a result of him consuming the following products which contained alcohol: cough syrup, pure vanilla extract, banana extract, and balsamic red wine vinegar." PS8 dated June 3, 2019. This is a highly unusual explanation for testing positive for alcohol, and suggests that BAKER may have been attempting to conceal his actual use of alcohol against this Court's conditions. This is similar to BAKER's false denials regarding his use of alcohol and controlled substances during his 2016 DWI arrest.

On June 27, 2019, BAKER again submitted a urine specimen, which tested and confirmed positive for alcohol. The Pretrial Services Report states, "The defendant reported he consumed two 12 ounce beers on June 26, 2019." PS8 dated July 3, 2019. These positive results are

significant not just because they violate the terms of his bond, but also because they occurred while he was receiving outpatient substance abuse treatment at Freedom House. BAKER is still early in his recovery following inpatient treatment, and continuing to test BAKER for alcohol and drugs provides BAKER incentive to remain clean and participate in treatment.

**D. BAKER Does Not Assert That These Conditions Present a Hardship**

Although BAKER asks this Court to remove his alcohol and drug related pretrial conditions, BAKER does not explain why he needs these conditions removed. BAKER demonstrates no hardship presented by these conditions. The United States understands that BAKER is now retired, so the testing and treatment conditions do not disrupt his work in any way. BAKER has access to transportation and financial means to attend treatment and appear for drug tests. Nor is there any need for BAKER to consume alcohol. On balance, the danger that BAKER presents to the community if the conditions are removed greatly outweighs any hardship the conditions present to BAKER.

**IV. Conclusion**

It is the position of the United States that BAKER's history of alcohol and methamphetamine use and abuse render him a danger to the community, absent pretrial testing, treatment, and abstinence from alcohol and controlled substances. 18 U.S.C. § 3142(g)(3)(a). The bond conditions imposed by this Court reasonably assure the safety of the community. *Id.* at § 3142(g)(4). By contrast, these conditions present no hardship to BAKER. The United States understands that Pretrial Services believes BAKER is benefiting from treatment and should continue under the same conditions. Accordingly, the United States requests that BAKER's Motion to Amend Conditions of Release (Doc. No. 43) be denied.

WHEREFORE, the United States respectfully requests that the Court deny BAKER's Motion to Amend Conditions of Release (Doc. No. 43).

Respectfully submitted,

MICHAEL GORDON  
ATTORNEY FOR THE UNITED STATES,  
ACTING UNDER AUTHORITY  
CONFERRED BY TITLE 28, UNITED  
STATES CODE, SECTION 515

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