

18-CV-859

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARVIN WASHINGTON, DEAN BORTELL,
as Parent of Infant ALEXIS BORTELL;
JOSE BELEN; SEBASTIEN COTTE,
as Parent of Infant JAGGER COTTE;
and CANNABIS CULTURAL ASSOCIATION, INC.,
Plaintiffs-Appellants.

— v. —

JEFFERSON BEAUREGARD SESSIONS, III,
in his official capacity as United States Attorney General;
UNITED STATES DEPARTMENT OF JUSTICE;
ROBERT W. PATTERSON, in his
official capacity as the Acting Director of the Drug
Enforcement Administration;
UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION; and the
UNITED STATES OF AMERICA,
Defendants-Appellees.

ON APPEAL FROM THE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SUPPLEMENTAL APPENDIX FOR PLAINTIFFS-APPELLANTS

Michael S. Hiller
Lauren A. Rudick
Fatima V. Afia
Jason E. Zakai
Hiller PC
600 Madison Avenue
New York, NY 10022

Joseph A. Bondy
Law Offices of Joseph A. Bondy
1841 Broadway
Suite 910
New York, New York 10023

Pro Bono Counsel to Plaintiffs-Appellants

SUPPLEMENTAL
APPENDIX
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN WASHINGTON, DEAN BORTELL,
as Parent of Infant ALEXIS BORTELL;
JOSE BELEN; SEBASTIEN COTTE,
as Parent of Infant JAGGER COTTE;
and CANNABIS CULTURAL ASSOCIATION, INC.,
Plaintiffs,

**AFFIRMATION
OF JOSEPH A.
BONDY**

17 Civ. 5625

- Against -

JEFFERSON BEAUREGARD SESSIONS, III,
in his official capacity as United States Attorney General;
UNITED STATES DEPARTMENT OF JUSTICE;
CHARLES "CHUCK" ROSENBERG, in his
official capacity as the Acting Director of the Drug
Enforcement Administration;
UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION; and the
UNITED STATES OF AMERICA,

Defendants.

JOSEPH A. BONDY, an attorney licensed to practice law in New York and before
this Court, hereby affirms that the following facts are true:

1. I was born, raised and publicly educated in New York City.
2. I was admitted to the Bar of the Southern District of New York on July 21, 1995. I am a member of the legal team representing the plaintiffs *pro bono*.
3. I am a life member of the National Association of Criminal Defense Lawyers (NACDL), and a life member of the National Legal Committee (NLC) of the National Organization for the Reform of Marijuana Laws (NORML).

4. I have been a practicing criminal defense attorney, involved in the pursuit of justice for over twenty-two years. I have had the honor of having represented hundreds of human beings, from all races, ethnicities, backgrounds, and walks of life, during their most difficult days of tribulation and judgment. Among these individuals, I have also represented federal marijuana defendants at various stages of the criminal process, including pre-trial, trial, sentencing, and appeal.

5. I have observed first-hand how the Controlled Substances Act (CSA) and United States Sentencing Guidelines (USSGs) have been unequally enforced and applied against people of color and minority communities, which I find to be morally repugnant and unconstitutional.

6. In 2015, I was asked by founding members of the Cannabis Cultural Association (CCA), a new group comprised primarily of young people of diverse racial and ethnic backgrounds, to join the group's Board of Directors (BOD). I accepted, and shortly thereafter I was elected CCA vice-president.

7. The CCA is incorporated in New York, and has IRC 501(c)(3) status as a not-for-profit public charitable organization. The CCA regularly holds meetings, and conducts educational and community empowerment events intended to promote social and racial equality in the nascent lawful cannabis industry, while advocating to end disparity in enforcement of marijuana laws against people of color and minorities.

8. The CCA has conducted events in New York and New Jersey, in Spanish and in English. The CCA has a web of members and supporters, who, among other functions, volunteer their time organizing and running events, attending political rallies, and speaking

at various other drug-policy events. The CCA's sponsors have included law firms, attorneys, physicians, and not-for-profit groups.

9. Currently, the CCA is one of a number of advocacy groups endorsing the "Start Smart" Marijuana Regulation and Taxation Act (MRTA, S.3040A/A.3506A), introduced earlier this year in the New York State legislature by Senator Liz Kreuger (D. Man.), which would establish a legal market for marijuana in New York.¹

10. The CCA's membership is open to like-minded individuals, who support the group's mission statement and cause.

11. Such members include, but are not limited to, affiants Leo Bridgewater, Kordell Nesbitt, and Thomas Motley. Their experiences aren't unique. Rather, many of the CCA's members have been victims of overzealous, ethnocentric, drug enforcement policies since they were young. For them, unequal application and enforcement of all marijuana laws is their reality—not that of privileged white American society.

12. The evidence surrounding the enactment of the CSA, the decision to maintain cannabis in Schedule I, and the ensuing disparity in application of the CSA leads ineluctably to the conclusion that the law was grounded in discrimination, and has been used with a discriminatory intent, targeting people of color and minorities, through the decades.

¹ See <http://smart-ny.com/wp-content/uploads/2017/03/6.12.17-MRTA-Reintro-Press-Release-final-pdf.pdf>

13. As a CCA executive board member and practicing attorney, it is my hope that, through the instant action, the unconstitutional rationale and application of the CSA can be brought to a close, and that what is right and just will prevail.

Dated: December 1, 2017
New York, New York



Joseph A. Bondy

AFFIDAVIT

State of New York)
 :..ss:
County of New York)

LEO BRIDGEWATER hereby declares under the penalties of perjury that the following facts are true:

1. I am a honorably discharged United States Army Veteran.
2. I served from November 1, 2001 to October 31, 2006 as a telecommunications specialist, E-4, and was deployed four times to Iraq.

3. Upon my separation from the United States Army, I commenced employment at L-3 Communications, located at the Pentagon, where I worked as a telecommunications specialist for the Department of the Army. During this time, I maintained a secret level security clearance with the Department of Defense, United States Department of State, the North Atlantic Treaty Organization, and the National Security Agency.
4. After approximately two years, I commenced employment for a company named ITT Systems, located in Baghdad, Iraq. I worked as a telecommunications specialist for the Total Army Communications, Southwest Central Asia & Afghanistan (TACSWCAA). I maintained the same security classifications during this time.
5. I ended my work with ITT Systems in Baghdad in December 2012, and returned to Atlanta, Georgia, where I used the GI Bill and attended college.
6. I returned to my home town of Trenton, New Jersey in 2014, when my mother passed away.
7. I became a medical cannabis patient in New Jersey in 2015.
8. I am currently enrolled in college in New Jersey, pursuant to the GI Bill.

9. As a result of my medical use of cannabis pursuant to New Jersey State law, I am unable to renew my security clearances, as they require clean urinalysis results. But for this fact, I would be working within my area of expertise as a telecommunications specialist, within the private contracting community.

10. I am a co-founding member of the New Jersey Cannabis Commission, a registered IRC 501(c)(3) not-for-profit organization, and I am also a member of the Cannabis Cultural Association (CCA).

Dated: New York, New York
November 2, 2017



LEO BRIDGEWATER



NOTARY PUBLIC

SHERYL E. REICH
NOTARY PUBLIC, State of New York
No. 31-488934
Qualified in New York County
Commission Expires 6/30/2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

MARVIN WASHINGTON, DEAN BORTELL,
as Parent of Infant ALEXIS BORTELL;
JOSE BELEN; SEBASTIEN COTTE,
as Parent of Infant JAGGER COTTE;
and CANNABIS CULTURAL ASSOCIATION, INC.,
Plaintiffs,

- Against -

AFFIDAVIT

JEFFERSON BEAUREGARD SESSIONS, III,
in his official capacity as United States Attorney General;
UNITED STATES DEPARTMENT OF JUSTICE;
CHARLES "CHUCK" ROSENBERG, in his
official capacity as the Acting Director of the Drug
Enforcement Administration;
UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION; and the
UNITED STATES OF AMERICA,

Defendants.

X

State of New York)
 : ss:
County of New York)

THOMAS MOTLEY hereby declares under the penalties of perjury that the
following facts are true:

1. I am a 43 year-old, African American male;
2. I was indicted in the Southern District of New York with a marijuana cultivation and distribution conspiracy involving in excess of 100 marijuana plants;
3. I pled guilty, pursuant to a plea agreement. Thereafter, I was sentenced below the Sentencing Guidelines to two concurrent six month terms of imprisonment, to be followed by a three-year term of supervised release;

4. For nearly thirty years, I have believed that the drug laws, including the marijuana laws, are enforced more stringently and unequally against people of color. This belief was reinforced by the numerous people whom I met while in federal custody, nearly all of whom were people of color and many of whom were serving five and ten year mandatory minimum sentences;

5. I am currently self-employed as a contractor. I also have a t-shirt company, "Thank God for Life," which for the past three years has organized toy and clothing drives in Harlem, donating those items to inner city youth.

6. I have never pursued any type of minority owned business loan or grant, because I believe that my conviction will render me ineligible for these programs. I also know that my ability to travel is limited because of my marijuana conviction.

7. I am a member of the Cannabis Cultural Association.

Dated: November 27, 2017
New York, New York


THOMAS MOTLEY

Sworn to before me
this 27th day of December 2017
Sheryl E. Reich

SHERYL E. REICH
NOTARY PUBLIC, State of New York
No. 31-4697834
Qualified in New York County
Commission Expires 6/30/2018

AFFIDAVIT

State of Arizona)
 :.ss:
County of Maricopa)

KORDELL NESBITT hereby declares under the penalties of perjury that the following facts are true:

1. I was previously employed as a federal law enforcement officer by the Department of Homeland Security. I am African-American, and a member of the Cannabis Cultural Association (CCA);

2. On August 14, 2013, I was arraigned in the Southern District of New York (SDNY) on an indictment, charging me with a marijuana conspiracy involving under 100 kilograms of marijuana, in violation of 21 U.S.C. 846 and 21 U.S.C. 841(b)(1)(C). See United States v. Kordell Nesbitt, 1:13-cr-00629-KBF (Docket Entry 11);

3. On January 8, 2014, I pled guilty to the marijuana conspiracy, in violation of 21 U.S.C. 846 and 21 U.S.C. 841(b)(1)(C). My advisory Sentencing Guidelines range was 0-6 months imprisonment;

4. On May 13, 2014, I was sentenced to time-served, followed by three years of supervised release, with a special condition that I serve 45 weekends in a half-way house;

5. On September 4, 2014, I was held to have violated my supervised release and was sentenced to six months' home confinement with electronic monitoring, to be followed by three years of supervised release;

6. On August 28, 2017, the conditions of my supervised release were modified to reflect that, due to my subsequent \$534.42. federal credit card fraud conviction, year-and-one-day sentence, and three-year term of supervised release, See United States v. Kordell

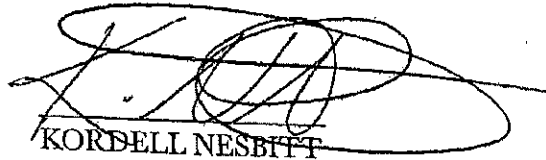
Nesbitt, 1:16-cr-00447-KBF (SDNY), I could not incur major purchases or enter new financial obligations without my probation officer's permission.

7. In addition to being convicted of a marijuana felony, serving time in a half-way house and home detention, and living under Government supervision thereafter, I still face a number of legal collateral consequences because of my controlled substance felony conviction;

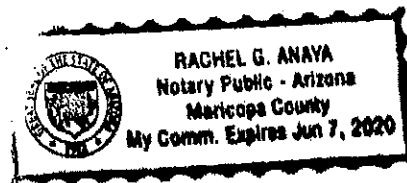
8. These consequences can affect almost every area of my life, including housing, employment, insurance, limitations on travel, social security, federal grants, and voting.

9. Indeed, I was just denied employment because my background check revealed the existence of the federal marijuana offense. (See Attached).

Dated: New York, New York
November 7, 2017


KORDELL NESBITT


NOTARY PUBLIC



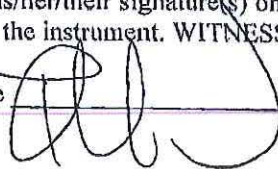
NOTARY ACKNOWLEDGEMENT
to be attached to *Affirmation*

State of ARIZONA } ss:

County of MARICOPA } ss:

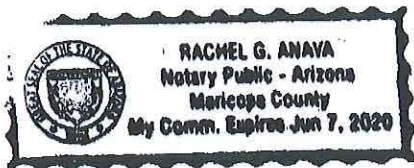
On 11/8/17, before me the undersigned, personally appeared Kordell Nesbitt personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature



My Commission Expires

10/17/20





Background Verification Unit
1001 Fannin, Suite 4000
Houston, TX 77002

11/04/2017

Kordell Nesbitt
11752 W. Joblanca Rd.
Avondale, AZ 85323

Dear Kordell

Thank you for sharing your time with us, and your interest in Waste Management.

We have obtained a consumer report on you prepared by CARCO Group Inc., which may result in our inability to offer you employment.

Enclosed are copies of the report that we received and a summary of your rights under the Fair Credit Reporting Act. If you would like to dispute the findings in this report, you're welcome to do so by completing the enclosed CARCO Dispute Form.

Any and all questions about the report, including your ability to dispute the contents must be sent directly to CARCO Group Inc.

CARCO GROUP INC.
5000 CORPORATE COURT, SUITE 203
HOLTSVILLE, NEW YORK 11742
Phone: 631-862-9300
Fax: 877-755-0009

Sincerely,

Waste Management

Enclosures: CARCO Background Report
Summary of Rights
CARCO Dispute Form


Kordell Nesbitt
11/04/2017

A criminal record search for convictions and arrests, where prosecution is pending, was initiated for addresses as per Client specifications on the subject as follows:

Name Searched	Location	Level	Status
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CONFIDENTIAL

Subject: Nesbitt, Kordell

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Nesbitt, Kordell	GILA, AZ	Felony	Pass
NESBITT, KORDELLK	GILA, AZ	Felony	Pass
Nesbitt, Kordell	MARICOPA, AZ	Felony / Misdemeanor	Pass
NESBITT, KORDELLK	MARICOPA, AZ	Felony / Misdemeanor	Pass
Nesbitt, Kordell	MONROE, PA	Felony / Misdemeanor	Pass
NESBITT, KORDELLK	MONROE, PA	Felony / Misdemeanor	Pass
Nesbitt, Kordell	PINAL, AZ	Felony	Pass
NESBITT, KORDELLK	PINAL, AZ	Felony	Pass
Nesbitt, Kordell	SOUTHERN/NEW YORK, NY	Federal Criminal	Fail
Nesbitt, Kordell	STATEWIDE, NY	Felony / Misdemeanor	Pass
NESBITT, KORDELLK	STATEWIDE, NY	Felony / Misdemeanor	Pass
Nesbitt, Kordell	STATEWIDE, PA	Felony / Misdemeanor	Pass
NESBITT, KORDELLK	STATEWIDE, PA	Felony / Misdemeanor	Pass

Court Docket #: 1:13-CR-00629
 Jurisdiction: SOUTHERN/NEW YORK
 Searched: 7 Years
 Court: U.S. DISTRICT COURT

RECORD MATCHES ON THE FOLLOWING:

Name, DOB, SSN

Comments:

Date of Charge: 08/14/2013
 Charge:
 Plead: PLEAD GUILTY
 Disposition: GUILTY
 Convicted Of: Conspiracy to distribute controlled substance
 Type of Offense: FELONY
 Sentence Date: 05/13/2014
 Sentence: Time served (length not stated), 3 years supervised release with conditions, \$100.00 fees and costs. On 09/03/2014 revocation of supervised release, 3 years supervised release with conditions including 6 months of home detention.

END OF DOCKET

Social Security / Residence

CONFIDENTIAL

Subject: Nesbitt, Kordell

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TRANS UNION SSN TRACE XXX XX XXXX

REF : 10/13/2017 15:19:03 FNCT

SA-000013

** SSN HAWK ALERT