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Jefferson v. State

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Georgia Supreme Court holds that O.C.G.A. § 16-15-9 is unconstitutional on its face to the extent that it authorizes the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang.

In State v. Jefferson, et al, S17A1085, the Georgia Supreme Court held that O.C.G.A. § 16-15-9 is unconstitutional on its face to the extent that it authorizes the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang. The Court condemned a very specific application of the amended statute, namely, the introduction of third party convictions in order to prove an element of Street Gang Act violations. The decision is restricted to that. The remainder of O.C.G.A. § 16-15-9 remains in effect.

Relying heavily upon Kirby v. United States, 174 US 47 (1899), the Court held that O.C.G.A. § 16-15-9 operates in violation of the Sixth Amendment confrontation clause. The Court rejected the State’s arguments that third party criminal convictions of other alleged gang members were merely business or public records that are not testimonial. The Court did drop a footnote in the opinion indicating that there is nothing to suggest that a particular defendant’s prior conviction could not be used against that same defendant in her or her own case “under proper circumstances.” The Court also took the time to note that the use of a gang expert to introduce those prior convictions at trial “does nothing” to change the fundamental Sixth Amendment problem created by the statute.

Monday’s opinion means that a single, specific method of proving the existence of the gang is no longer viable constitutionally. There are several other methods to prove the existence of a Criminal Street Gang in criminal prosecutions.