

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	NO. 65426-8-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
GAMADA ABDULLAHI,	)	
	)	
Appellant.	)	FILED: March 5, 2012
	)	

Leach, J. — Gamada Abdullahi appeals convictions for promoting commercial sexual abuse of a minor and conspiracy to promote prostitution in the first degree. He contends that the State’s evidence that he was a gang member was insufficient to prove conspiracy, that the State failed to present evidence that he conspired individually or collectively with 6 of 16 coconspirators named in the to-convict instruction, and that the admission of a detective’s opinion testimony identifying Abdullahi as a gang member violated his right to a jury trial. Because sufficient non-gang-related evidence supports the conspiracy conviction, conspiracy is not an alternative means crime, and Abdullahi has not preserved the opinion evidence issue for appeal, we affirm.

**FACTS**

In the summer of 2007, 15-year-old H.R. moved from her mother’s home

in Las Vegas, Nevada, to Washington state to live with her father. H.R. enrolled at West Seattle High School. There, she met an individual named Worio, who told H.R. that he was a pimp. One night, Worio introduced H.R. to his brother, Gamada Abdullahi. Abdullahi, whom H.R. also knew as "G-Bezz," told H.R. that she could earn \$1,000 by having dinner with another man. Later that night, H.R. sneaked out of her father's house to meet Abdullahi at a bus stop. Instead of taking her to have dinner, however, Abdullahi drove H.R. to Pacific Highway, or "the track," to work as a prostitute. Abdullahi taught H.R. how to walk "the track," how to solicit clients, and what prices to charge for different sexual acts. H.R. performed sexual acts with at least three individuals in exchange for money that night. She gave the money she earned to Abdullahi.

From late September until the beginning of November, H.R. worked intermittently as Abdullahi's prostitute. During that time, H.R. did not live at home, and neither her father nor her mother knew her whereabouts. In early November, H.R. unexpectedly arrived at her mother's house in Nevada and did not thereafter return to Washington.

In November 2008, Detective Todd Novisedlak of the Seattle police vice unit began investigating members of a West Seattle gang called the Westside Street Mobb. Detective Novisedlak believed that the Westside Street Mobb was involved in promoting prostitution. The investigation focused in part on

DeShawn Cash Money Clark and T.G., a young woman who prostituted for him. After T.G.'s arrest for soliciting an undercover officer, she became an informant for the police. She identified members of the Westside Street Mobb and other women who worked for them, including Abdullahi and H.R.

Detective Novisedlak traveled to Las Vegas and interviewed H.R. She corroborated the information that T.G. provided the police. Based upon the fruits of the Seattle police investigation, the State charged Clark, Mycah Johnson, Shawn Clark, Thomas Foster, Gerald Jackson, and Desmond Manago. All but Clark pleaded guilty to the various charges against them.

H.R. testified for the State at Clark's trial. After hearing H.R.'s testimony, the State charged Abdullahi with promoting commercial sexual abuse of a minor. The State amended the information twice, first to add Westside Street Mobb member Donta Walters as a codefendant and second to include a charge of conspiracy to promote prostitution against both Abdullahi and Walters. Because the charging information was not specific, Walters's counsel moved for a bill of particulars identifying all alleged coconspirators. The trial court granted counsel's motion, and before trial, the State filed with the court a "Response to Court's Order for List of Co-Conspirators."<sup>1</sup>

Also pretrial, both defendants moved to exclude evidence about their

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<sup>1</sup> The document listed 14 individuals, including the defendants, and "others unknown."

affiliation with the Westside Street Mobb. After a CrR 3.5 hearing, the trial court ruled that the gang evidence was admissible under ER 404(b):

[T]here's no question the gang affiliation is prejudicial, and it's only admissible upon a showing of a nexus between the gang activities and the charged crimes. I think the evidence establishes that there is a connection between the gang's purpose and values and the offenses committed, and that is the, what you might call the 404(b) hook by which the gang evidence is admissible against each Defendant.

However, the trial court limited testimony regarding the gang's criminal activities to its "alleged pimping behavior."

At trial, the State presented extensive expert testimony from Detective Joseph Gagliardi of the King County Sheriff's Office gang unit. Detective Gagliardi provided general testimony about criminal street gangs and the means used by the county to identify a gang and its members. Detective Gagliardi identified two types of gangs—turf gangs and for-profit gangs—and explained that a for-profit gang is "a gang whose primary motivating factor is not the claiming of territory, but simply making money. Their entire goal is to make more money for the members or for the gang or for both."

Detective Gagliardi testified that the Westside Street Mobb was a for-profit gang and that promoting prostitution was one of the gang's primary activities. He explained that he had identified the Westside Street Mobb as a

gang by applying the factors set forth in the criminal code.<sup>2</sup> Detective Gagliardi testified that the Westside Street Mobb formed in West Seattle's Delridge neighborhood in mid-2006. He explained that members of the Westside Street Mobb wear red and black, throw the "W" and "M" hand signs, and typically sport a leprechaun tattoo. He also applied the 13 factors used by the King County Sheriff's Office to determine whether an individual is affiliated with a particular gang to explain to the jury his opinion that Abdullahi was a member of the Westside Street Mobb. On cross-examination, however, Detective Gagliardi admitted that Abdullahi failed to meet the first three, most important criteria for determining gang affiliation—that the individual admits gang membership or affiliation, has gang-related tattoos, and possesses gang paraphernalia or documentation.<sup>3</sup>

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<sup>2</sup> RCW 9.94A.030(12) defines "criminal street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity."

<sup>3</sup> The remaining 10 factors are: the individual (1) wears gang-related clothing or jewelry, (2) uses a gang-related moniker, (3) has been identified as an individual affiliated with a criminal street gang based upon reliable information, (4) appears in photographs with other gang members, (5) uses gang-related hand signs or verbiage, (6) associates with other known gang members, (7) is involved in gang-related crimes or activities, (8) is identified as a gang member by another gang member, (9) whose name appears on a gang document or in gang graffiti, and (10) targets victims or property from a rival gang or crosses out rival gang graffiti.

H.R. testified to the above facts regarding her relationship with Abdullahi. When the State asked H.R. whether she had heard of the Westside Street Mobb, she said, "I've heard about it. It's like a name that was in the air, but it wasn't—like I was never talked to about it or anything." H.R. further testified that Abdullahi never told her he was a member of the Westside Street Mobb.

T.G. also testified for the State. T.G. told the jury that she had worked as a prostitute for Clark. When asked how she knew Abdullahi, T.G. said, "Being a pimp from Street Mobb. Cash—Cash's friend." Both T.G. and H.R. testified that they had once shared a motel room with Clark and Abdullahi so that H.R. could train T.G. how to work as a prostitute.

Other State witnesses testified about Abdullahi's gang affiliation. Westside Street Mobb member Mycah Johnson identified Abdullahi as a Westside Street Mobb member and said he had seen Abdullahi in gang meetings. When asked if he had been aware that Abdullahi "pimped out girls," however, Johnson stated that he was unaware of Abdullahi's involvement in prostitution. Similarly, F.S., who had worked as Walters's prostitute, identified Abdullahi as a Westside Street Mobb member but said that he was not a pimp. R.G., another young prostitute connected to the Westside Street Mobb, testified that she knew Abdullahi was acquainted with Westside Street Mobb members but did not know whether Abdullahi himself was involved in the gang.

Testifying in his defense, Walters said that to his knowledge, Abdullahi was not a pimp. The State asked Walters about Abdullahi's affiliation with the Westside Street Mobb, inquiring, "This guy right here in Court with you, he's a member of Street Mobb, isn't he?" Walters replied, "No," elaborating, "I've been knowing him almost my whole life. He's not from Street Mobb."

The trial court instructed the jury that it could convict Abdullahi of conspiracy if it found that he agreed with any one of 16 named individuals and/or with "unknown persons to engage in or cause the performance of conduct constituting the crime of Promoting Prostitution in the First Degree."<sup>4</sup>

During closing argument, the State asserted that the general evidence regarding Abdullahi's affiliation with the Westside Street Mobb as well as his specific involvement with Clark proved the conspiracy charge against him:

The conspiracy charge that the Defendants face, why are there so many people named in that? Because that's Street Mobb. And what you need to do is you look in there on that charge and whether we've proved it. Did Gamada Abdullahi conspire with one of the members of Street Mobb to promote prostitution? Well, he did with Cash Money Clark when he's sharing that room with [T.G.] and [H.R.]. And Cash and Mr. Abdullahi are telling the girls where to go, using the phones together. That is assistance. That is

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<sup>4</sup> The 16 individuals were "validated" Westside Street Mobb members: DeShawn Cash Money Clark, Mycah Johnson, Roosevelt Johnson, Thomas Mario Foster, Shawn Clark, Gerald Jackson, Jeffrey Knox, Tyrone Bellinger, Brandon Shell, Michael Flowers, Devontea Rosemon, Henok Gabrimichael, Derrick Wroten-Prentice, Elijah Cain, Donta Walters, and Ramadhmi Hamisi Rashid.

promoting prostitution in the first degree and . . . the agreement to do that, because they are members of the same gang, because . . . its focus is promoting prostitution, that agreement is what we punish. That is conspiracy.

A jury convicted Abdullahi as charged. Abdullahi appealed and filed a personal restraint petition, which this court stayed pending a final decision in his direct appeal.<sup>5</sup>

### STANDARD OF REVIEW

When we review the sufficiency of the evidence, we decide whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the State.<sup>6</sup> By challenging the sufficiency of the evidence, the defendant admits the truth of the State's evidence and all reasonable inferences drawn from it.<sup>7</sup>

We review de novo an issue raised by a party for the first time on appeal as a manifest error affecting a constitutional right.<sup>8</sup>

### ANALYSIS

#### Sufficiency of the Evidence

Abdullahi contends the State presented insufficient evidence to prove conspiracy. To convict a defendant of conspiracy to promote prostitution, the

<sup>5</sup> This court denied Abdullahi's motion to consolidate the personal restraint petition with the direct appeal.

<sup>6</sup> State v. Lord, 117 Wn.2d 829, 881, 822 P.2d 177 (1991).

<sup>7</sup> State v. Pedro, 148 Wn. App. 932, 951, 201 P.3d 398 (2009), review denied, 169 Wn.2d 1007, 236 P.3d 206 (2010).

<sup>8</sup> State v. Stanley, 120 Wn. App. 312, 314, 85 P.3d 395 (2004).



State must prove that (1) the defendant agreed with at least one other person to engage in conduct constituting the crime of promoting prostitution, (2) the defendant entered into the agreement with the intent that the conduct occur, and (3) any one of the persons involved took a substantial step in pursuance of the agreement.<sup>9</sup> A substantial step is conduct that strongly indicates a criminal purpose.<sup>10</sup> The State bears the burden of proving each element of the crime beyond a reasonable doubt.<sup>11</sup>

The existence of a conspiracy may be proved “by showing the declarations, acts and conduct of the conspirators.”<sup>12</sup> Conspiracy may also be inferred from circumstantial evidence.<sup>13</sup> The State need not establish that a formal agreement existed between the alleged coconspirators.<sup>14</sup> Rather, “[t]he agreement may be shown by a ‘concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common

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<sup>9</sup> “A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.” RCW 9A.28.040. “A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force.” RCW 9A.88.070(1).

<sup>10</sup> State v. Dent, 67 Wn. App. 656, 660, 840 P.2d 202 (1992).

<sup>11</sup> State v. Aver, 109 Wn.2d 303, 310, 745 P.2d 479 (1987).

<sup>12</sup> State v. Barnes, 85 Wn. App. 638, 664, 932 P.2d 669 (1997) (quoting State v. McGonigle, 144 Wash. 252, 260, 258 P. 16 (1927)).

<sup>13</sup> Barnes, 85 Wn. App. at 664.

<sup>14</sup> Barnes, 85 Wn. App. at 664.

purpose.”<sup>15</sup> Once the State establishes the existence of a conspiracy, evidence connecting the defendant to the conspiracy, however slight, is sufficient to convict the defendant of knowing participation in the conspiracy.<sup>16</sup>

Abdullahi asserts that his conspiracy conviction is impermissibly predicated solely on the fact of his gang affiliation. He cites Ninth Circuit case law holding evidence of gang membership alone is insufficient to support a conviction for conspiracy and other similar crimes.<sup>17</sup> We do not decide the sufficiency of the gang evidence to support a conspiracy conviction because the State presented sufficient non-gang-related evidence to sustain the verdict.

Apart from the gang evidence presented at Abdullahi’s trial, the State’s evidence included testimony that Clark and Abdullahi worked out of the same motel room for 11 days in October 2007. Because T.G. had never engaged in prostitution, Abdullahi and Clark instructed H.R. to train T.G. T.G. said, “When I met [H.R.], she already knew what she was doing. . . . [T]hat’s why they brought me to her so she could show me what to do.” During that time, H.R. and T.G.

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<sup>15</sup> Barnes, 85 Wn. App. at 664 (internal quotation marks omitted) (quoting State v. Casarez-Gastelum, 48 Wn. App. 112, 116, 738 P.2d 303 (1987)).

<sup>16</sup> State v. Brown, 45 Wn. App. 571, 579, 726 P.2d 60 (1986).

<sup>17</sup> Mitchell v. Prunty, 107 F.3d 1337, 1342 (9th Cir. 1997) (“Membership in a gang cannot serve as proof of intent, or of the facilitation, advice, aid, promotion, encouragement, or instigation needed to establish aiding and abetting.”); United States v. Garcia, 151 F.3d 1243, 1246 (9th Cir. 1998) (“[In a prosecution for conspiracy to commit assault,] evidence of gang membership cannot itself prove that an individual has entered a criminal agreement to attack members of rival gangs.”).

walked “the track” prostituting while Abdullahi and Clark stayed at the motel. Clark and Abdullahi instructed H.R. and T.G. when to leave and where to go. When they decided that it was time for H.R. and T.G. to return, Clark would call T.G.’s cell phone. Upon returning to the motel, H.R. and T.G. gave Abdullahi and Clark the money they made prostituting. T.G. paid for the motel room with money Clark gave her.

This evidence shows strongly that Abdullahi and Clark entered into an agreement to engage in conduct constituting the crime of promoting prostitution, that they intended that prostitution occur because of the agreement, and that one or both of them took a substantial step in performance of the agreement. We disagree with Abdullahi that he and Clark engaged in separate criminal activities at the motel. The efforts described above demonstrate a common purpose. That purpose, at least in part, was for H.R. to train T.G. to prostitute and to make money from her work. It is unlikely that this could have been accomplished without an agreement between Clark and Abdullahi. Viewing the evidence in the light most favorable to the State, a rational trier of fact could conclude that Abdullahi engaged in a conspiracy to promote prostitution. Thus, sufficient evidence supports his conviction.

Abdullahi next contends that each of the possible coconspirators listed in the to-convict instruction represented an alternative means of committing

conspiracy. He argues the State did not present sufficient evidence to prove each of these alternative means. Because conspiracy is not an alternative means crime, Abdullahi's claim is fundamentally flawed.

An alternative means crime is one where the legislature has “provide[d] that the proscribed criminal conduct may be proved in a variety of ways.”<sup>18</sup> The State need not elect a particular means of committing the crime, but a verdict will be set aside if one of the charged methods is not supported by substantial evidence.<sup>19</sup>

In State v. Peterson,<sup>20</sup> our Supreme Court discussed the difference between an alternative means criminal statute and a statute that establishes a single means to commit a crime. There, Peterson challenged his failure to register conviction on the basis that the State had failed to prove each of the charged alternative means. Peterson argued that failure to register could be accomplished in three different ways—(1) failing to register after becoming homeless, (2) failing to register after moving between fixed residences within a county, or (3) failing to register after moving from one county to another—making it an alternative means crime.<sup>21</sup> The court disagreed, contrasting the failure to

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<sup>18</sup> State v. Peterson, 168 Wn.2d 763, 769, 230 P.3d 588 (2010) (quoting State v. Smith, 159 Wn.2d 778, 784, 154 P.3d 873 (2007)).

<sup>19</sup> State v. Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994).

<sup>20</sup> 168 Wn.2d 763, 770, 230 P.3d 588 (2010).

<sup>21</sup> Peterson, 168 Wn.2d at 769-70.

register statute with the theft statute, which establishes alternative means:

The alternative means available to accomplish theft describe distinct acts that amount to the same crime. That is, one can accomplish theft by wrongfully exerting control over someone's property or by deceiving someone to give up their property. In each alternative, the offender takes something that does not belong to him, but his conduct varies significantly. In contrast, the failure to register statute contemplates a single act that amounts to failure to register: the offender moves without alerting the appropriate authority. His conduct is the same—he either moves without notice or he does not. The fact that different deadlines may apply, depending on the offender's residential status, does not change the nature of the criminal act: moving without registering.<sup>[22]</sup>

Because “[t]here is only one method by which an offender fails to register,”<sup>23</sup> the court rejected Peterson’s challenge.

Similarly, the conspiracy statute contemplates only a single method to commit conspiracy. A person commits conspiracy when, with intent, he agrees with one or more individuals to cause a crime to occur. The single act of an agreement is what the conspiracy statute punishes. Therefore, the conspiracy statute does not describe distinct acts that amount to the same crime.

Abdullahi argues that conspiracy, as charged here, is an alternative means crime because jury instruction 20 allowed the jury to find Abdullahi guilty based upon any one of multiple possible agreements with various Westside

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<sup>22</sup> Peterson, 168 Wn.2d at 770.

<sup>23</sup> Peterson, 168 Wn.2d at 770.

Street Mobb members.<sup>24</sup> To determine whether a crime is an alternative means crime, however, this court examines the criminal statute, not the trial court's jury instructions.<sup>25</sup> A criminal conspiracy occurs when an individual, with the necessary intent, agrees with "one or more persons" to engage in or cause criminal conduct.<sup>26</sup> As the Peterson court succinctly noted, "The mere use of a disjunctive in a statute does not an alternative means crime make."<sup>27</sup> The conduct of an individual who violates the conspiracy statute is the same regardless of the name of the other party to the prohibited agreement. Because the proscribed conduct is the same in every instance, Abdullahi has not demonstrated that conspiracy is an alternative means crime. His insufficiency claim fails.

### Right to a Jury Trial

Abdullahi contends that Detective Gagliardi's testimony identifying the Westside Street Mobb as a gang and Abdullahi as a member of that gang constituted an impermissible opinion on his guilt and therefore violated his

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<sup>24</sup> In its brief, the State conceded that instruction 20 was improper because it contained three names of possible coconspirators not listed in the bill of particulars but argued the error was harmless beyond a reasonable doubt. At oral argument, however, the State withdrew its concession of error based on its reading of Brown, 45 Wn. App. 571. Because Abdullahi does not challenge the inclusion of the additional names in the instruction on appeal, we do not address whether the instruction was proper.

<sup>25</sup> See, e.g., Peterson, 168 Wn.2d at 769-70.

<sup>26</sup> RCW 9A.28.040.

<sup>27</sup> Peterson, 168 Wn.2d at 770.

constitutional right to a jury trial. Because Abdullahi failed to object to Gagliardi's testimony on this basis below, he must demonstrate that the admission of this evidence was a manifest error affecting a constitutional right.<sup>28</sup>

RAP 2.5(a)(3) requires that a defendant raising a constitutional error for the first time on appeal show how the alleged error actually affected his rights at trial.<sup>29</sup> This showing makes the error manifest, allowing appellate review.<sup>30</sup> This court employs a two-part analysis to determine whether an asserted error is a manifest error affecting a constitutional right.<sup>31</sup> First, we determine whether the error is truly constitutional, as opposed to another form of trial error.<sup>32</sup> Second, we decide whether the error is manifest.<sup>33</sup> "Manifest" error requires a defendant to demonstrate actual prejudice.<sup>34</sup> Actual prejudice arises if the asserted error had practical and identifiable consequences at trial.<sup>35</sup> To decide the actual prejudice prong, we examine the record to determine if it is sufficiently developed to decide the merits of the claim.<sup>36</sup> "If the facts necessary to

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<sup>28</sup> RAP 2.5(a)(3).

<sup>29</sup> State v. Kirkman, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007).

<sup>30</sup> Kirkman, 159 Wn.2d at 927.

<sup>31</sup> See State v. Holzkecht, 157 Wn. App. 754, 760, 238 P.3d 1233 (2010), review denied, 170 Wn.2d 1029, 249 P.3d 623 (2011).

<sup>32</sup> Holzkecht, 157 Wn. App. at 759-60.

<sup>33</sup> Holzkecht, 157 Wn. App. at 760.

<sup>34</sup> Holzkecht, 157 Wn. App. at 760.

<sup>35</sup> State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009) (quoting Kirkman, 159 Wn.2d at 935).

<sup>36</sup> O'Hara, 167 Wn.2d at 99.

adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.”<sup>37</sup> Also, “[m]anifest errors affecting constitutional rights are subject to harmless error analysis.”<sup>38</sup> A constitutional error is harmless only if we are convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error.<sup>39</sup>

“Generally, no witness may offer testimony in the form of an opinion regarding the guilt or veracity of the defendant.”<sup>40</sup> “Impermissible opinion testimony regarding the defendant’s guilt may be reversible error because such evidence violates the defendant’s constitutional right to a jury trial, which includes the independent determination of the facts by the jury.”<sup>41</sup> Because Abdullahi asserts that the State elicited testimony from a witness improperly expressing an opinion on his guilt, he raises an alleged error of constitutional dimension.<sup>42</sup> Therefore, we must next determine whether the alleged error was manifest.

In this context, manifest error requires “an explicit or almost explicit witness statement on an ultimate issue of fact.”<sup>43</sup> Abdullahi argues that

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<sup>37</sup> State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

<sup>38</sup> Holzknicht, 157 Wn. App. at 760.

<sup>39</sup> Holzknicht, 157 Wn. App. at 760.

<sup>40</sup> State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001).

<sup>41</sup> Kirkman, 159 Wn.2d at 927.

<sup>42</sup> See Kirkman, 159 Wn.2d at 927.



Detective Gagliardi's testimony qualifies because "the State's theory was that Abdullahi was guilty of conspiracy because he was a member of a 'gang.'" While Detective Gagliardi identified Abdullahi as a member of the Westside Street Mobb, he did not testify that Abdullahi was guilty of conspiracy. Testimony that a defendant belongs to a particular gang does not usurp the jury's duty to determine whether that defendant had an agreement with another person to engage in specific criminal activity.<sup>44</sup> Thus, Detective Gagliardi's statements were not explicit statements regarding Abdullahi's guilt. Abdullahi fails to raise a manifest constitutional error that this court can review for the first time on appeal.

Abdullahi asserts that only a jury may determine whether a gang exists and who is a member of that gang. He cites the definitions of "criminal street gang," "criminal street gang associate or member," and "criminal street gang-related offense"<sup>45</sup> in the Sentencing Reform Act of 1981, chapter 9.94A RCW. But these definitions apply to a special allegation that the State must prove to the jury beyond a reasonable doubt before a court may impose an exceptional sentence.<sup>46</sup> Because the State did not allege the existence of an aggravating

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<sup>43</sup> Kirkman, 159 Wn.2d at 936.

<sup>44</sup> The jury received instructions on the elements of conspiracy. We presume that the jury followed this instruction when determining whether Abdullahi was guilty. See State v. Perez-Valdez, 172 Wn.2d 808, 818-19, 265 P.3d 853 (2011).

<sup>45</sup> RCW 9.94A.030(12)-(14).

factor here, Abdullahi's argument fails.

Abdullahi also quotes a substantial portion of a Second Circuit opinion, United States v. Mejia,<sup>47</sup> where the court described concerns raised by gang expert testimony:

When the Government skips the intermediate steps and proceeds directly from internal expertise to trial, and when those officer experts come to court and simply disgorge their factual knowledge to the jury, the experts are no longer aiding the jury in its fact finding; they are instructing the jury on the existence of the facts needed to satisfy the elements of the charged offense.

This discussion occurred in the context of deciding whether the officer's expert testimony was proper under the Federal Rules of Evidence and the Sixth Amendment confrontation clause.<sup>48</sup> While Mejia presents an interesting legal issue, this case does not present it. Therefore, Mejia is inapposite. Abdullahi's claim fails.

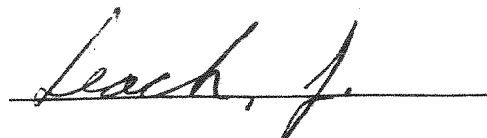
#### CONCLUSION

Because sufficient non-gang-related evidence supports Abdullahi's conspiracy conviction, conspiracy is not an alternative means crime, and the admission of the detective's gang testimony was not a manifest error of constitutional magnitude that Abdullahi may raise for the first time on appeal, we

<sup>46</sup> See RCW 9.94A.829.

<sup>47</sup> 545 F.3d 179, 191 (2d Cir. 2008).

<sup>48</sup> Mejia, 545 F.3d at 183.



NO. 65426-8-I / 19

affirm.

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WE CONCUR:

Dupe, C. S.

Edenfor, J.