

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 95481-0
)	
vs.)	
)	STATE'S ANSWER TO
MARK DALE SHEWMAKER,)	PETITION FOR REVIEW
)	
Petitioner.)	
_____)	

The State asks this Court to deny Mark Shewmaker's petition for review of the Court of Appeals' opinion affirming his convictions for two counts of child molestation in the first degree, State v. Shewmaker, unpublished, No. 74925-1-I, 2017 WL 6451194 (Wash. Ct. App. Dec. 18, 2017). The reasoning and authority set out in the Court of Appeals' opinion amply demonstrate that the criteria for review are not met in this case. However, the petition for review seriously mischaracterizes the record in one respect that is not immediately apparent upon reading the Court of Appeals' opinion, necessitating this brief Answer.

In the prosecutorial misconduct section of his petition, Shewmaker asserts that the prosecutor asked witness Tami Beck during redirect examination why she believed that the allegations against Shewmaker

were true, eliciting a response that it was because Beck had herself been sexually abused at some point in her life. Pet. for Review at 14-16. In reality, the prosecutor did not ask Beck about her belief in the allegations against Shewmaker. Rather, the prosecutor asked Beck to explain her answer to a question by Shewmaker, who was pro se, regarding Beck's opinion about a completely unrelated sexual abuse allegation.

During a defense interview, Beck was asked whether anyone close to her had ever been the victim of a sex crime; she answered yes, and indicated that the perpetrator was never caught. 12/14/15 RP 1537. Prior to Beck's testimony, the prosecutor unsuccessfully moved to exclude that evidence over Shewmaker's objection. 12/14/15 RP 1537.

At the very end of his cross-examination of Beck, Shewmaker elicited that someone close to her had been the victim of a sex offense and asked, "Do you believe that that sex offense happened?" to which Beck answered, "Yes." 12/14/15 RP 1584. The prosecutor began her re-direct by clarifying that the victim to whom Beck was referring was not N.S., the victim in this case. 12/14/15 RP 1585. Beck at no point offered an opinion on the truth of N.S.'s allegations.

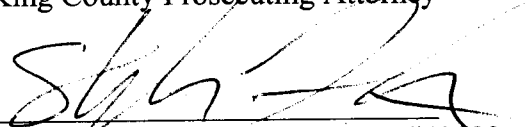
The prosecutor then inquired, "Why do you believe that it happened," in relation to why Beck believed that the offense against

someone close to her had happened. 12/14/15 RP 1585. Beck's response—that she believed it because she was the victim—was a surprise to everyone, as Beck had never before disclosed her prior abuse. 12/14/15 RP 1589. The prosecutor's question was a proper follow-up to Shewmaker's cross-examination, and was not prosecutorial misconduct.

Because the Court of Appeals' decision is consistent with prior decisions and does not involve a significant question of constitutional law or issue of substantial public interest that needs to be addressed by this Court, the State respectfully asks the Court to deny the petition for review.

Submitted this 5th day of February, 2018.

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