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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED January 6, 2025, Port Angeles, WA

Original e-filed at the Supreme Court,  
Copy to counsel listed above.

IN THE SUPREME COURT OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

SIMONE NELSON,

Appellants.

No. 1036736

STATE'S ANSWER TO  
PETITIONER'S MOTION TO  
ACCEPT PETITION FOR REVIEW  
AS TIMELY

I. IDENTITY OF MOVING PARTY

The Respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

The State does not object to the Petitioner's motion for enlargement of time for filing the Petition for Review.



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### III. FACTS RELEVANT TO MOTION

The State accepts the facts as set forth in the petitioner's motion to extend time to file the petition for review filed Dec. 3, 2024.

### IV. GROUNDS FOR RELIEF AND ARGUMENT

"The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file . . . a petition for review[.]" RAP 18.8.

"Negligence, or the lack of 'reasonable diligence,' does not amount to 'extraordinary circumstances.'" *Beckman ex rel. Beckman v. State, Dept. of Social and Health Services*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000) (quoting *Shumway v. Payne*, 136 Wn.2d 383, 964 P.2d 349 (1998) (other citations omitted)).

On the other hand, "[e]xtraordinary circumstances" include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998) (*Hoirup v. Empire Airways, Inc.*, 69 Wn. App. 479, 482, 848 P.2d 1337 (1993); *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988)).



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2 The *Shumway* Court, in denying a motion to extend time to file a  
3 petition for review, noted that *Shumway* did not claim reasonable diligence.  
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5 *Id.* at 396.

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7 The facts in this case tend to fall within reasonable diligence as the  
8 petition was actually filed under a different case number within the 30 days  
9 permitted under RAP 13.4. The mistake was corrected almost immediately  
10 and the correct filing was missed by one day.

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13 The fact is that the petition was actually filed within 30 days albeit  
14 with the incorrect case name. This incorrect case name happens to be for a  
15 petition for review that was recently filed on the same or similar grounds in  
16 *State v. Danielson*, no. No. 57675-9-II on Nov. 15, 2024.  
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## 19 20 V. CONCLUSION

21 For the foregoing reasons, the State does not object to the petitioner's  
22 motion to extend time to file the petition for review.  
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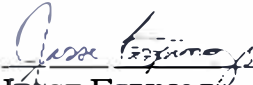
24 This document contains 377 words, excluding the parts of the  
25 document exempted from the word count by RAP 18.17.  
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28 DATED January 6, 2025.  
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# CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

**January 06, 2025 - 4:31 PM**

## **Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,673-6  
**Appellate Court Case Title:** State of Washington v. Simone Renee Nelson  
**Superior Court Case Number:** 95-1-00163-6

### **The following documents have been uploaded:**

- 1036736\_Answer\_Reply\_20250106162954SC723292\_0282.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
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