

STATE v. WIGGIN, No. 65214-1-I

DWYER, C.J. (concurring and dissenting) — For the reasons set forth in State v. Morgan, 163 Wn. App. 341, 348-53, 261 P.3d 167 (2011), I believe that Wiggin cannot raise the issue of special verdict instructional error for the first time on appeal.

Accordingly, I dissent from the majority's holding to the contrary.

In all other respects, I join in the majority opinion.

Dwyer, C.J.