

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Humphrey*, Slip Opinion No. 2011-Ohio-1426.]

NOTICE

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SLIP OPINION NO. 2011-OHIO-1426

THE STATE OF OHIO, APPELLEE, v. HUMPHREY, APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Humphrey*, Slip Opinion No. 2011-Ohio-1426.]

Discretionary appeal accepted, judgment of the court of appeals vacated in part, and cause remanded to the court of appeals for application of State v. Johnson.

(No. 2011-0054 — Submitted March 1, 2011 — Decided March 30, 2011.)

APPEAL from the Court of Appeals for Ross County, No. 10CA3150,
2010-Ohio-5950.

{¶ 1} The discretionary appeal is accepted.

{¶ 2} The portion of the judgment of the court of appeals addressing appellant's second assignment of error below is vacated on the authority of *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, and the cause is remanded to the court of appeals for application of our decision in *State v. Johnson*.

SUPREME COURT OF OHIO

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

LUNDBERG STRATTON, J., dissents and would not accept the discretionary appeal.

Michael M. Ater, Ross County Prosecuting Attorney, and Richard W. Clagg, Assistant Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and Craig M. Jaquith, Assistant Public Defender, for appellant.
