

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Gilbert*, Slip Opinion No. 2009-Ohio-6543.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2009-OHIO-6543

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

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Gilbert*, Slip Opinion No. 2009-Ohio-6543.]

Court of appeals' judgment affirmed on the authority of State v. Lester, and cause remanded.

(No. 2009-0610 — Submitted September 30, 2009 — Decided
December 17, 2009.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 90615,
2009-Ohio-463.

{¶ 1} The judgment of the court of appeals is affirmed as to appellant's first assignment of error below (Proposition of Law No. I accepted for review in this court) on the authority of *State v. Lester*, 123 Ohio St.3d 396, 2009-Ohio-4225, 916 N.E.2d 1038. The cause is remanded to the court of appeals for further proceedings not inconsistent with *State v. Lester*.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR,
O'DONNELL, LANZINGER, and CUPP, JJ., concur.

SUPREME COURT OF OHIO

William D. Mason, Cuyahoga County Prosecuting Attorney, and Lisa Reitz Williamson and Kristen L. Sobieski, Assistant Prosecuting Attorneys, for appellee.

Robert L. Tobik, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, for appellant.
