

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Alsup*, Slip Opinion No. 2011-Ohio-227.]

NOTICE

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SLIP OPINION NO. 2011-OHIO-227

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

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Alsup*, Slip Opinion No. 2011-Ohio-227.]

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

(No. 2010-1748 — Submitted January 4, 2011 — Decided January 25, 2011.)

APPEAL from the Court of Appeals for Montgomery County, No. 23641, 2010-Ohio-4038.

{¶ 1} The discretionary appeal is accepted.

{¶ 2} The judgment of the court of appeals is vacated on the authority of *State v. Johnson*, ___ Ohio St.3d ___, 2010-Ohio-6314, ___ N.E.2d ___, and the cause is remanded to the court of appeals for application of our decision in *State v. Johnson*.

O'CONNOR, C.J., and LUNDBERG STRATTON, O'DONNELL, CUPP, and MCGEE BROWN, JJ., concur.

SUPREME COURT OF OHIO

PFEIFER and LANZINGER, JJ., dissent and would not accept the discretionary appeal.

Mathias H. Heck Jr., Montgomery County Prosecuting Attorney, and R. Lynn Nothstine, Assistant Prosecuting Attorney, for appellant.
