

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. McClendon*, Slip Opinion No. 2011-Ohio-954.]

NOTICE

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SLIP OPINION NO. 2011-OHIO-954

**THE STATE OF OHIO, APPELLEE AND CROSS-APPELLANT, v. MCCLENDON,
APPELLANT AND CROSS-APPELLEE.**

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*Discretionary appeal not accepted, cross-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. 2010-1950 — Submitted February 15, 2011 — Decided March 8, 2011.)

APPEAL from the Court of Appeals for Montgomery County, No. 23558,
2010-Ohio-4757.

{¶ 1} The discretionary appeal is not accepted.

{¶ 2} The discretionary cross-appeal is accepted.

{¶ 3} 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*, ___ Ohio St.3d ___, 2010-Ohio-6314, ___ N.E.2d ___, and the cause

SUPREME COURT OF OHIO

is remanded to the court of appeals for application of our decision in *State v. Johnson*.

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

LANZINGER and MCGEE BROWN, JJ., dissent and would not accept the cross-appeal.

Mathias H. Heck Jr., Montgomery County Prosecuting Attorney, and Carley J. Ingram, Assistant Prosecuting Attorney, for appellee and cross-appellant.

Kyle McClendon, pro se.
