

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Foster*, Slip Opinion No. 2012-Ohio-5765.]

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. 2012-OHIO-5765

STATE v. FOSTER.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Foster*, Slip Opinion No. 2012-Ohio-5765.]

Court of appeals' judgment reversed on the authority of State v. Howard.

(No. 2012-0843—Submitted December 4, 2012—Decided December 7, 2012.)

APPEAL from the Court of Appeals for Montgomery County,
No. 24637, 2012-Ohio-1431.

{¶ 1} The judgment of the court of appeals is reversed on the authority of *State v. Howard*, ___ Ohio St.3d ___, 2012-Ohio-5738, ___ N.E.2d ___, and the cause is remanded to the trial court for resentencing.

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

Mathias H. Heck Jr., Montgomery County Prosecuting Attorney, and
Johnna M. Shia, Assistant Prosecuting Attorney, for appellant.

Cicero Law Office and Anthony Cicero, for appellee.
