

[Cite as *State v. Alsup*, 128 Ohio St.3d 340, 2011-Ohio-227.]

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

[Cite as *State v. Alsup*, 128 Ohio St.3d 340, 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*, 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*.

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

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.
