

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

[Cite as *State v. Lanier*, 128 Ohio St.3d 339, 2011-Ohio-5.]

Judgment of the court of appeals vacated in part, and cause remanded to the court of appeals for application of State v. Johnson.

(Nos. 2009-0232 and 2009-0328 — Submitted January 4, 2011 — Decided January 5, 2011.)

CERTIFIED by and APPEAL from the Court of Appeals for Hamilton County,
No. C-080162, 180 Ohio App.3d 376, 2008-Ohio-6906.

{¶ 1} Sua sponte, case No. 2009-0232 is dismissed as having been improvidently certified.

{¶ 2} In case No. 2009-0328, the portion of the court of appeals' judgment addressing appellant's third assignment of error below is vacated, sua sponte, 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*.

{¶ 3} Oral argument in these cases scheduled for January 18, 2011, is accordingly canceled.

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

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Scott M. Heenan, Assistant Prosecuting Attorney, for appellee.

Roger W. Kirk, for appellant.

Timothy Young, Ohio Public Defender, and Terrence K. Scott, Assistant Public Defender, urging reversal for amicus curiae, Ohio Public Defender.
