

**THE STATE OF OHIO, APPELLEE, v. HUMPHREY, APPELLANT.**

[Cite as *State v. Humphrey*, 128 Ohio St.3d 397, 2011-Ohio-1426.]

*Discretionary 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. 2011-0054 — Submitted March 1, 2011 — Decided March 30, 2011.)

APPEAL from the Court of Appeals for Ross County, No. 10CA3150,  
2010-Ohio-5950.

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{¶ 1} The discretionary appeal is accepted.

{¶ 2} 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*, 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 PFEIFER, O’DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

LUNDBERG STRATTON, J., dissents and would not accept the discretionary appeal.

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Michael M. Ater, Ross County Prosecuting Attorney, and Richard W. Clagg, Assistant Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and Craig M. Jaquith, Assistant Public Defender, for appellant.

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