

[Cite as *State v. McClendon*, 128 Ohio St.3d 354, 2011-Ohio-954.]

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

[Cite as *State v. McClendon*, 128 Ohio St.3d 354, 2011-Ohio-954.]

*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.

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{¶ 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*, 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, LUNDBERG STRATTON, O'DONNELL, and  
CUPP, JJ., concur.

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

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

Kyle McClendon, pro se.

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