

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Smith*, Slip Opinion No. 2011-Ohio-1839.]

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**SLIP OPINION NO. 2011-OHIO-1839**

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

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Smith*, Slip Opinion No. 2011-Ohio-1839.]

*Judgment of the court of appeals reversed.*

(No. 2010-1345 — Submitted October 12, 2010 — Decided April 19, 2011.)

APPEAL from the Court of Appeals for Lorain County, Nos. 09CA009634 and 09CA009635, 2010-Ohio-3007.

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{¶ 1} Sua sponte, this cause is no longer held for the decision in 2010-1216, *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535.

{¶ 2} The judgment of the court of appeals is reversed.

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

PFEIFER and LANZINGER, JJ., dissent.

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SUPREME COURT OF OHIO

Dennis P. Will, Lorain County Prosecuting Attorney, and Billie Jo Belcher, Assistant Prosecuting Attorney, for appellant.

Jack W. Bradley and Michael E. Stepanik, for appellee.

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