

[Cite as *State v. Smith*, 128 Ohio St.3d 442, 2011-Ohio-1839.]

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

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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.

{¶ 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.

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.
