

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

[Cite as *State v. Cody*, 118 Ohio St.3d 366, 2008-Ohio-2701.]

Discretionary appeal accepted and cause remanded for application of State v. Cabrales.

(No. 2008-0266 — Submitted April 22, 2008 — Decided June 11, 2008.)

APPEAL from the Court of Appeals for Franklin County,

No. 07AP-142, 2007-Ohio-6776.

{¶ 1} The discretionary appeal is accepted.

{¶ 2} Because the court of appeals entered its judgment on appellant's fifth assignment of error below prior to the release by this court of its opinion in *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181, this cause is remanded to the court of appeals for consideration of whether the court of appeals' judgment should be modified in view of our opinion in *State v. Cabrales*.

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

Ron O'Brien, Franklin County Prosecuting Attorney, and Jennifer L. Maloon, Assistant Prosecuting Attorney, for appellee.

Stephen Dehnart, for appellant.
