

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-150030 |
| Plaintiff-Appellee, | : | TRIAL NO. B-140964(A) |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| RICARDO FERGUSON, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

We overrule the appellant's sole assignment of error upon our determination that the trial court properly denied the appellant's motions for a hearing under *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), and to suppress evidence, when Ferguson failed to make a substantial preliminary showing that the challenged statement of the officer in the affidavit in support of the warrant was false, that the officer included it knowing that it was false or with a reckless disregard for the truth, and that the allegedly false statement was necessary to the finding of probable cause. *See Franks; State v. Jones*, 90 Ohio St.3d 403, 412, 739 N.E.2d 300 (2000); *State v. Roberts*, 62 Ohio St.2d 170, 177-178, 405 N.E.2d 247 (1980).

Ferguson may not now predicate error under *Franks* on portions of the officer's affidavit not identified in his motion for the *Franks* hearing. *See Franks* at 171. Nor may he challenge the warrant on the grounds that the affidavit was insufficient to establish

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probable cause for the additional reasons set forth in his appellate brief, when he failed to raise those issues in the trial court. *See State v. Campbell*, 1st Dist. Hamilton No. C-140372, 2015-Ohio-1464, ¶ 12.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on October 21, 2015
per order of the court _____.
Presiding Judge