

United States Court of Appeals
For the Eighth Circuit

No. 23-1329

United States of America

Plaintiff - Appellee

v.

Ivan Avalos Espinoza

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: November 21, 2023

Filed: November 30, 2023

[Unpublished]

Before COLLOTON, SHEPHERD, and KOBES, Circuit Judges.

PER CURIAM.

Following his guilty plea to a drug offense, Ivan Avalos Espinoza (Avalos) appeals the district court's¹ denial of his motions challenging the search of two cell phones.

Upon careful review, we conclude that the district court did not abuse its discretion by denying Avalos's request for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), as he failed to show that information necessary to the finding of probable cause had been intentionally or recklessly omitted from the warrant application. See United States v. Short, 2 F.4th 1076, 1077, 1080 (8th Cir. 2021) (denial of Franks hearing is reviewed for abuse of discretion; to merit a hearing, defendant must make a substantial preliminary showing that the warrant affiant deliberately or recklessly omitted information necessary to the finding of probable cause).

We also conclude that the district court did not err in denying Avalos's motion to suppress, as there was a fair probability that evidence of drug trafficking would be found on the phones. See United States v. Holly, 983 F.3d 361, 363 (8th Cir. 2020) (in reviewing denial of a motion to suppress, district court's legal conclusions are reviewed de novo); see also United States v. James, 52 F.4th 1035, 1038 (8th Cir. 2022) (probable cause to support search is present when there is fair probability that evidence of crime will be found in particular place); United States v. Eggerson, 999 F.3d 1121, 1127 (8th Cir. 2021) (it was reasonable to infer that cell phones found at a location associated with drug trafficking and on the person of an individual associated with drug trafficking had a fair probability of containing evidence of the crime).

¹The Honorable Brian C. Buescher, United States District Judge for the District of Nebraska, adopting the report and recommendations of the Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

Accordingly, we affirm.
