

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-038

AUGUST TERM, 2018

State of Vermont v. Francis G. Fielder*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 18-1-17 Rdcr
		Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conditional guilty plea to driving under the influence, second offense. He argues that the court should have granted his motion to suppress and dismiss because the police lacked reasonable grounds to stop him. We affirm.

The trial court made the following findings in denying defendant’s motion. On the evening in question, a police officer pulled up next to defendant’s vehicle at an intersection. Defendant was stopped at a red light and the officer believed that defendant’s vehicle was beyond the marked stop line.* The officer followed defendant to the next intersection, which was controlled by a stop sign. The officer testified that he watched defendant’s vehicle carefully at the second intersection and that defendant failed to come to a complete stop at the stop sign.

The court credited the officer’s testimony, which it found supported by the video from the officer’s cruiser. It concluded that defendant committed a traffic infraction by failing to stop. See 23 V.S.A. § 1048(b) (“[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line . . .”). The court rejected defendant’s assertion that § 1048(b) required something other than the complete cessation of a vehicle. The court thus concluded that the officer had a reasonable and articulable suspicion of a traffic violation, which justified the stop. See *State v. Davis*, 2007 VT 71, ¶ 7, 182 Vt. 573 (mem.) (explaining that officer may make investigatory stop “based on a reasonable and articulable suspicion of criminal activity, or of a traffic violation” (quotation omitted)). Defendant entered a conditional guilty plea to driving under the influence, second offense, and this appeal followed.

Defendant argues that the officer lacked reasonable grounds to stop him. He maintains that he did stop at the stop sign, citing the cruiser video as support. He also asserts that § 1048(b) does not use the term “complete stop” or require a stop of any particular duration.

* The court made additional findings and conclusions regarding defendant’s behavior at the first intersection, which we need not discuss here.

The trial court’s decision presents a mixed question of fact and law. We will uphold the court’s findings “unless they are clearly erroneous.” State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15. “The question of whether the facts as found met the proper standard to justify a stop is one of law,” which we review de novo. Id.

We find no error here. While defendant argues that he did stop at the stop sign, the trial court found otherwise and its finding is supported by the evidence. The police officer testified to this effect and the court credited his testimony. See State v. Richard, 2016 VT 75, ¶ 8, 202 Vt. 519 (explaining that trial court’s findings will be upheld “if any reasonable and credible evidence in the record supports them”). The video evidence does not clearly contradict this testimony. We cannot conclude in light of this evidence that the trial court’s finding was clearly erroneous or unsupported by the evidence. See id. (noting that in reviewing trial court’s factual findings, Supreme Court may review video to determine if it “contain[s] evidence supporting the court’s findings”). Finally, while defendant correctly states that § 1048(b) does not use the words “complete stop,” it plainly requires that a driver actually “stop” at a stop sign and the evidence here supports the finding that defendant failed to do so. The officer therefore was justified in stopping defendant based on a reasonable and articulable suspicion that he committed a traffic infraction. Defendant’s motion to suppress and dismiss was properly denied.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice