

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1066 / 06-0469  
Filed February 14, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**MARK LEON KEMP,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak (suppression hearing) and Artis Reis (trial and sentencing), Judges.

Defendant appeals his convictions and sentences for criminal mischief in the third degree, burglary in the third degree as an habitual offender, and theft in the second degree as an habitual offender. **AFFIRMED IN PART AND VACATED IN PART.**

Patricia Reynolds, Acting State Appellate Defender, and Shellie Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**PER CURIAM**

Mark L. Kemp appeals his convictions and sentences, following jury trial, for criminal mischief in the third degree under Iowa Code sections 716.1 and 716.5 (2005); burglary in the third degree as an habitual offender under sections 713.1, 713.6A, 902.9(3), and 902.8; and theft in the second degree as an habitual offender under sections 714.1(4), 714.2(2), 902.9(3), and 902.8. He claims the district court erred in overruling his motion to suppress evidence, arguing the court erred in finding the police had reasonable cause to stop the vehicle he was in to investigate a residential burglary which had occurred minutes earlier a short distance away. He also claims the court erred in imposing a \$750 fine on each of his two convictions as an habitual offender.

Kemp's motion to suppress evidence raised an issue of his right to be free from unreasonable seizure under the federal and state constitutions. We thus make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997). We give deference to the district court's findings of fact, but are not bound by them. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). Upon our de novo review of the suppression issue we fully agree with the district court's findings of fact, conclusions of law, application of law to the facts found, and resulting order denying Kemp's motion to suppress. We therefore affirm on the suppression issue. See Iowa Ct. R. 21.29(1)(d), (e).

The State appropriately concedes that the trial court erred in imposing the two fines of \$750 each. See Iowa Code § 902.9(3) ("An habitual offender shall be confined for no more than fifteen years."); *State v. Halterman*, 630 N.W.2d

611, 613-14 (Iowa Ct. App. 2001) (holding district court erred in imposing fine on habitual offender as neither the predecessor of current section 902.9(3) nor another statute imposed a fine upon the defendant's conviction and sentence as an habitual offender). We therefore vacate the two fines of \$750. See Iowa Ct. R. 21.29(1)(a), (c), (e).

In summary, we vacate the two fines of \$750 and otherwise affirm Kemp's convictions and sentences.

**AFFIRMED IN PART AND VACATED IN PART.**