IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. JAHEIM ROMAINE CYRUS, Defendant-Appellant.	SUPREME COURT NO. 21-0828

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE BRENDAN GREINER, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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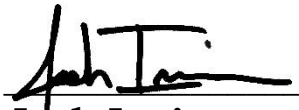
CERTIFICATE OF SERVICE

On the 23rd day of August, 2022, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Jaheim R. Cyrus, 2210 Dean Ave., Des Moines, IA 50317.

APPELLATE DEFENDER'S OFFICE



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JI/ls/08/22

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STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about August 3, 2022. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. The district court erred in concluding Cyrus was not seized without reasonable suspicion or probable cause.

On the evening of October 15, 2020, Des Moines police received a citizen report that a car had turned around in a driveway then parked at the curb on a public street. No illegal activity was reported, but the caller was concerned. (Brief in Support of Motion to Suppress at p. 1, n. 1) (App. p. 8). Des Moines Police Officer Shawn Morgan was dispatched to investigate this circumstance. (Suppression Tr. p. 11 L. 11 – 23). When he arrived, he parked "in the middle of the street" behind the still-legally-parked car, shined a spotlight directly

at the driver, activated rear-facing flashing roof lights,[1] exited his car quickly so the driver would not leave,[2] and approached. (Suppression Tr. p. 12 L. 2–24, p. 16 L. 9–17, p. 28 L. 21–p. 29 L. 12, p. 30 L. 8–16, p. 40 L. 21–p. 41 L. 4). The driver, a young Black male, opened his door and put one foot on the ground; Morgan said something to him, and the driver put his foot back inside the car. (Suppression Tr. p. 23 L. 21–p. 24 L. 16, p. 33 L. 24–p. 34 L. 16). This encounter happened on a dead-end street with Morgan's car parked in the middle of the only road out. (Suppression Tr. p. 37 L. 12–18). A reasonable

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[1] Morgan characterized these as "warning lights" rather than "emergency lights" because they were rear-facing. (Suppression Hearing Tr. p. 16 L. 7–10). But the flashing light was produced from the light bar on the roof of the squad car, and the officer could not remember if the light was amber or blue-and-red. (Suppression Hearing Tr. p. 45 L. 13–p. 46 L. 3).

[2] Morgan's admission that he approached quickly so that Cyrus would "stay[] where he was," in part because Cyrus placing his foot outside the vehicle raised "officer safety" concerns, is particularly telling. If Cyrus opening his door and placing his foot on the ground triggered safety concerns from Morgan, one need not have a vivid imagination to picture what would have happened if Cyrus actually exited his car to walk away.

person would not feel free to disregard Morgan and leave under these circumstances. The district court erred in concluding otherwise.

In State v. Fogg, an officer parked "at least twenty feet" from the defendant's car in an alley, did not activate his overhead light bar, did not shine a spotlight on the car, and did not order the defendant to remain in her car when she opened the door. State v. Fogg, 936 N.W.2d 664, 665–66 (Iowa 2019). Although the officer was parked in an alley which blocked Fogg's route in one direction, a private citizen could have done the same thing, and Fogg had other exit routes available. Id. at 669–70. Unlike in Fogg, Morgan's act of parking in the middle of the street next to Cyrus is not something a normal citizen is legally allowed to do, and thus was a demonstration of police authority. See Iowa Code § 321.358(11) (it is unlawful to stop or park "[o]n the roadway side of any vehicle stopped or parked at the edge or curb of a street."); Fogg, 936 N.W.2d at 669 ("One way of looking at the

matter is whether the officer was simply engaging in activity that any *private* person would have a right to engage in.") (citing State v. Wilkes, 756 N.W.2d 838, 844 (Iowa 2008); State v. Harlan, 301 N.W.2d 717, 720 (Iowa 1981)). The same is true of the officer's use of a light bar on the roof of his vehicle, another circumstance absent in Fogg. See Iowa Code §§ 321.423–.424.

Morgan acknowledged saying something to Cyrus (but could not remember what), and that Cyrus then put his foot back into his vehicle. (Suppression Tr. p. 39 L. 11–15). Morgan's statement—"stay in the car for me"—is audible in the dashcam video. (Defendant's Exhibit A Dashcam Video at 2:21). And even if it were not, the circumstances belie any conclusion that Morgan's statement was just some sort of friendly greeting; he had already greeted Cyrus and asked how he was doing. (Defendant's Exhibit A Dashcam Video at 2:15). Morgan also specifically acknowledged that he exited his car and approached quickly *to prevent Cyrus from leaving*, because

"it's not good officer safety." (Suppression Tr. p. 40 L. 21–p. 41 L. 9). Morgan even seemed to admit that, when a suspect has their car door open, he would usually order them to remain in the car, although there are issues with the transcript of this portion of the hearing. See (Suppression Tr. p. 41 L. 17–19) ("If I'd had the door remain (untranslatable) I most likely 'stay in the car' . . . ."). The circumstances, particularly Morgan's desire to keep Cyrus from leaving and admission that he would normally order a driver to remain in their car in this situation, indicate Cyrus testified honestly and accurately that Morgan ordered him to stay in his car. See (Suppression Tr. p. 47 L. 4–9).

The circumstances of this case, even without considering that the encounter involved a young Black male, would lead a reasonable person to conclude they were not free to leave. A seizure therefore occurred. Prior to approaching Cyrus' vehicle, Morgan had not observed any illegal or suspicious activity. (Suppression Tr. p. 19 L. 18–23). Therefore, the

seizure was unsupported by probable cause or reasonable suspicion, and thus conducted in violation of Cyrus' rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, section 8 of the Iowa constitution.

Additionally, one of the objective circumstances of this encounter was that it occurred between a uniformed, armed police officer and a young Black male. Cyrus does not suggest that the reasonable-person seizure test should be abandoned in favor of a subjective test which would turn on whether he personally felt free to leave. Rather, when evaluating the totality of the circumstances to determine whether a reasonable person in the defendant's position would feel free to end the encounter, courts should not ignore race as an objective circumstance. In fact, Mendenhall, the United States Supreme Court case which established the modern "reasonable person/free-to-leave" formulation, specifically noted that race *is* a relevant factor in that analysis, although it

was not dispositive in that case. See United States v. Mendenhall, 446 U.S. 544, 558 (1980) (noting defendants' age, educational background, and race, as well as the race of the officers involved, were "not irrelevant" factors in the analysis) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)).[3] Unfortunately, this portion of Mendenhall has rarely been acknowledged; it does not appear the Supreme Court has addressed it since, nor has any Iowa appellate decision which cites Mendenhall. In attempting to remain colorblind when conducting the Mendenhall analysis, courts apply a normative standard which perpetuates disparate treatment of minorities. See Evan M. McGuire, *Consensual Police-Citizen Encounters: Human Factors of A Reasonable Person and Individual Bias*, 16 Scholar: St. Mary's L. Rev. & Soc. Just. 693, 710–14 (2014); Devon W. Carbado, (e)racing the Fourth Amendment, 100 Mich. L. Rev. 946, 981–84 (2002); Robert V. Ward, *Consenting*

[3] Although Mendenhall is a plurality opinion, the quoted language about the relevance of race appears in a section joined by the five-justice plurality. See Mendenhall, 446 U.S. at 560.

to A Search and Seizure in Poor and Minority Neighborhoods: No Place for A "Reasonable Person", 36 How. L.J. 239, 247–48 (1993). As Professor Carbado notes:

> The Supreme Court's investment in colorblindness reflects a perpetrator perspective in the sense that race becomes doctrinally relevant only to the extent that the presumption of race neutrality and colorblindness can be rebutted by specific evidence that a particular police officer exhibits overtly racist behavior--in other words, is obviously a perpetrator of racism. Put another way, race potentially matters in the Fourth Amendment context only when a case involves a "racially bad" cop. Police officers who cannot be so described are presumed to be "racially good," and their racial interactions with people on the street are presumed to be constitutional.
>
> Significantly, the Supreme Court has not explicitly articulated colorblindness as a guiding principle of Fourth Amendment law. This ideology has to be excavated. Doing so helps to reveal precisely what the perpetrator perspective obscures: the racial allocation of the burdens and benefits of the Fourth Amendment. The material result of this racial allocation is that people of color are burdened more by, and benefit less from, the Fourth Amendment than whites. Consequently, the former are likely to feel less "secure in their persons, homes, papers, and effects" than the latter. Stated differently, people of color are more likely than whites to experience the Fourth Amendment as a technology of surveillance rather than as a constitutional

> guardian of property, liberty, and privacy. This problem is compounded by the fact that, as a historical matter, people of color have not been the beneficiaries of effective law enforcement. In other words, the privacy losses they experience are not the price they pay for effective crime prevention and detection, but a cost of race. This suggests that people of color are under-protected even as they are over-policed. In effect, from the perspective of many people of color, the Fourth Amendment has been eraced.

Carbado, 100 Mich. L. Rev. at 968–69 (footnotes omitted).

This Court should acknowledge what is already common sense: race plays a significant role in defining the reasonable person's perspective of police encounters.

Conclusion

The district court erred in concluding no unconstitutional seizure occurred in this case. This Court should vacate Cyrus' conviction and sentence, grant his motion to suppress evidence, and remand the case for further proceedings.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $1.93, and that amount has been paid in full by the Office of the Appellate Defender.

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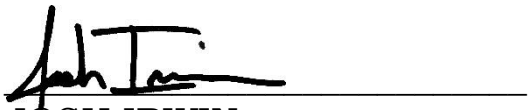
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,708 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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