IN THE SUPREME COURT OF IOWA

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| STATE OF IOWA<br><br>Plaintiff-Appellee,<br><br>v.<br><br>JAHEIM CYRUS,<br><br>Defendant-Appellant | Supreme Court No. 21-0828 |

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. BRENDAN GREINER (MOTION TO SUPPRESS) &
ODELL G. MCGHEE, II, (SENTENCING), JUDGES

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# APPLICANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED JANUARY 11, 2023

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**CERTIFICATE OF SERVICE**

On the 30th day of January, 2023, 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 Cyrus, 2210 Dean Ave., Des Moines, IA 50317.

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## QUESTIONS PRESENTED FOR REVIEW

**I. Whether the Court of Appeals erred in affirming the denial of Cyrus' motion to suppress, because the evidence demonstrates he was seized without reasonable suspicion or probable cause in violation of his rights under the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution? Additionally, whether the Court of Appeals erred in declining to consider the objective circumstance of Cyrus' status as a young Black male when conducting its analysis?**

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## STATEMENT IN SUPPORT OF FURTHER REVIEW

Jaheim Cyrus requests, pursuant to Iowa R. App. P. 6.1103, that this Court grant further review of the January 11, 2023 decision of the Iowa Court of Appeals affirming the denial of Cyrus' motion to suppress.

The Court of Appeals erred in concluding no seizure occurred, because a reasonable person in Cyrus' position would not feel free to disregard the police and leave. Cyrus was lawfully parked at the curb on a dead-end street when an officer in a marked squad car parked in the middle of the road beside his car, fixed a spotlight on him, activated rear-facing flashing overhead lights, and rapidly approached on foot while telling Cyrus to remain in his car. That order to remain in place is the only disputed circumstance, and the Court of Appeals concluded it cannot be heard in the video exhibit. Cyrus maintains the order is faint but audible, and even if it were not, Cyrus' testimony as well as the officer's established by preponderance of the evidence that it occurred. In any

event, even without the order the totality of the circumstances demonstrate that a seizure occurred, because a reasonable person in Cyrus' position would not feel free to disregard the officer and leave.

Additionally, the Court of Appeals erred in denying Cyrus' request to consider his status as a Black man when evaluating the totality of the circumstances. This is an issue of broad public importance which this Court should ultimately determine. See Iowa R. App. P. 6.1103(1)(b)(4). The Court of Appeals characterized this as a request for a subjective, rather than objective, standard. That is incorrect; Cyrus expressly argued that he was not calling for a subjective test which would turn on whether he personally felt free to leave. Rather, his status as a young Black man is an objective circumstance which should not be ignored when evaluating the totality of the circumstances. No Iowa case has ever held courts must turn a blind eye to race when evaluating whether a seizure has occurred. This Court should grant further review to clarify

this is not required by, and in fact is contradictory to, evaluation of the totality of the circumstances.

## STATEMENT OF THE CASE

### Nature of the Case

The Defendant-Appellant, Jaheim Cyrus, seeks further review of the Court of Appeals' decision affirming the district court's denial of his motion to suppress.

### Course of Proceedings

Cyrus generally accepts as accurate the Court of Appeals' recitation of the procedural history and facts. A detailed recitation is contained in the appellant's brief.

## ARGUMENT

**I. The Court of Appeals erred in affirming the denial of Cyrus' motion to suppress, because the evidence demonstrates Cyrus was seized without reasonable suspicion or probable cause in violation of his rights under the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. Additionally, the Court of Appeals erred in declining to consider the objective circumstance of Cyrus' status as a young Black male when conducting its analysis.**

The Court of Appeals concluded no seizure occurred when Des Moines Police Officer Morgan parked in the middle of the street next to Cyrus' legally-parked car, shined a spotlight at him, activated rear-facing overhead squad car lights, exited his squad car, and rapidly approached Cyrus on foot.[1] The court acknowledged that several of these actions constituted strong demonstrations of police authority, but still concluded the officer's conduct was not "significantly beyond that accepted in social intercourse," and so no seizure occurred. Opinion pp. 7–11 (quoting State v. Fogg, 936

[1] Morgan candidly acknowledged he exited his car and approached quickly so Cyrus would not leave. (Suppression Tr. p. 41 L. 2–4).

N.W.2d 664, 670 (Iowa 2019)). Respectfully, that conclusion is incorrect.

First, with regard to the use of overhead lights,[2] the court observed the use of an overhead light bar is "prescribed by statute" to only particular vehicles, including police vehicles. Opinion p. 7 (citing Iowa Code § 321.423). But the court determined it was unclear whether Cyrus saw the lights, or what color they were. With regard to the question whether Cyrus saw the lights, it defies common sense to conclude he did not. Common experience tells us overhead lights are very bright, and Cyrus can be seen looking back toward the squad car. Taking that into account, and also that the encounter occurred at night on a dim residential street, it is at least more likely than not Cyrus would have seen the lights shining on the ground and nearby houses. It is not dispositive that the lights are not visible on the street or houses in the exhibit

[2] Morgan acknowledged activating his overhead lights, but emphasized that they were rear-facing and testified he could not remember if they were amber or blue-and-red. (Suppression Hearing Tr. p. 16 L. 7–10, p. 45 L. 13–p. 46 L. 3).

video, because that video is from the squad car and facing forward, opposite the direction the lights were directed.

Regarding use of the spotlight, the court noted their use is not restricted to police vehicles and stated "the use of a spotlight is somewhat—thought not entirely—analogous to the use of ordinary headlights." Opinion p. 8. Respectfully, the only analogous aspect between the two is that they produce light from a vehicle; that aside, they are extremely different. Every vehicle on the road is equipped with headlights; far fewer have a spotlight (although they are common on police vehicles). The ability to direct a headlight beam is very limited, while the ability to move a spotlight beam in nearly all directions is readily available, as demonstrated by Morgan's adjustment of the beam to keep it fixed directly on Cyrus. See (Defendant's Exhibit A Dashcam Video at 00:01:58–00:02:05). And a spotlight is much brighter than ordinary headlights (which were also activated on Morgan's squad car). See (Suppression Hrg. Tr. p. 27 L. 17–25, p. 28 L. 8–14).

Ultimately, the court acknowledged that "the manner in which [a spotlight] is used on a marked patrol car is certainly relevant to the question of whether a reasonable person would feel free to leave," without commenting on the manner the spotlight was used in this case. Opinion p. 8. That manner was extremely coercive—pointing a spotlight directly at Cyrus[3] as the officer approached was akin to pointing an authoritative finger at him, clearly signaling a desire for Cyrus to remain in place so Morgan could speak with him. Additionally, shining an extremely bright light directly at someone's face impairs their ability to drive away (or otherwise leave), because it affects their vision. The Court of Appeals correctly recognized the use of a spotlight is a relevant circumstance to the seizure analysis, but failed to assign it proper weight.

Next, the Court of Appeals discussed the placement of Morgan's car relative to Cyrus'. When Morgan arrived, Cyrus

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[3] The Court of Appeals described the spotlight as being aimed at Cyrus' door. Opinion pp. 2, 6, 9. This is incorrect; the video shows Morgan fixing the light directly on Cyrus, including when Cyrus' vehicle door was open.

was parked at the curb just to the west of a T-intersection, facing west toward a dead end, and Morgan parked beside and slightly behind Cyrus in the middle of that intersection. (Defendant's Exhibit A Dashcam Video at 00:02:12). The court recognized Morgan had parked in a way which would be illegal for a normal citizen, and noted his positioning "created a setting where 'police plainly have the upper hand and are exerting authority in a fashion that makes it likely that a citizen would not feel free' to act." Opinion pp. 9–10 (quoting State v. Pals, 805 N.W.2d 767, 783 (Iowa 2011) and citing State v. Fogg, 936 N.W.2d 664, 670 (Iowa 2019)). But the court minimized the effect of the positioning of Morgan's vehicle, pointing out that it did not make it impossible for Cyrus to pull forward on the dead-end street, turn around, and leave. Opinion p. 9. However, impossibility is not the test; the question is whether Cyrus' ability to leave was "substantially impaired." See State v. Fogg, 936 N.W.2d 664, 668–69 (Iowa 2019) (citations omitted). It is true Cyrus could

have pulled forward then turned around, but he would have almost immediately encountered Morgan's car parked in the middle of the T-intersection again, and would have had to maneuver around it. This may have been perceived as odd, evasive, or suspicious behavior which could have helped justify a subsequent traffic stop. The fact a person would have to engage in unusual behavior in order to leave should be taken into account when evaluating whether their ability to leave was substantially impaired.

There is another troubling aspect to how Morgan's positioning affected circumstances: he used it to justify his use of overhead lights. Morgan testified he turned on his overhead lights because he was parked in the middle of the street and wanted to warn other drivers so he would not be hit. (Suppression Tr. p. 16 L. 11–17). That acknowledgment leads to two conclusions: Morgan's positioning would, in fact, impair the ability to travel on the street, and the initial (unexplained) show of authority—parking in the middle of the

street—was being used to justify a secondary show of authority.

Finally, the Court of Appeals concluded Cyrus' request to consider his race called for a subjective, rather than objective, standard when evaluating whether a seizure has occurred. Opinion p. 10. That is incorrect, and Cyrus expressly stated in briefing that he was not requesting a subjective standard. See Appellant's Reply Brief p. 11 ("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."). It is an objective fact that Cyrus is a young, Black male. The test whether a seizure occurred considers the totality of the circumstances—every objective fact which has an impact on whether a reasonable person in

the defendant's position would feel free to disregard the police and leave is relevant. While it may be difficult for a judge who has not had that same experience to weigh the circumstance of minority status, judges are called upon routinely to consider how a reasonable person would react to circumstances they have not personally experienced.

Furthermore, courts are already called upon to consider personal characteristics in the closely-related search-and-seizure area of consent, which the Court of Appeals noted. Opinion pp. 5–6 (quoting State v. Hauge, 973 N.W.2d 453, 468 (Iowa 2022). The United States Supreme Court has also indicated race is a relevant circumstance to the evaluation. 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 determining whether the defendant voluntarily accompanied police) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)). And while the Mendenhall Court

couched that statement in terms of consent, the question was whether the defendant consented to go to a second location with police; that is seizure by another name. The Court of Appeals erred by refusing to take Cyrus' race into consideration alongside the rest of the totality of the objective circumstances.

**Conclusion**

The Court of Appeals erred in affirming the denial of Cyrus' motion to suppress. A reasonable person in Cyrus' position would not have felt free to disregard the officer and leave. Furthermore, the Court of Appeals erred in failing to take the objective circumstance of Cyrus' race into account as part of the totality of the circumstances. This Court should grant further review, vacate the Court of Appeals decision, order that all evidence stemming from this unconstitutional seizure must be suppressed, and remand the case for further proceedings.

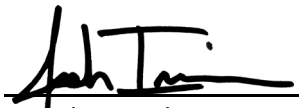
## ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was $2.21, and that amount has been paid in full by the Office of the Appellate Defender.

## CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR FURTHER REVIEWS

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

> [X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 2,096 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



Dated: *1/30/23*

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