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5
6 **WELTON JUSTICE COURT**
7 **YUMA COUNTY**
8

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 STEVEN ANDERSON,

13 Defendant.

) Case No. J1403IA2009-00072
)
)

) DEMAND FOR JURY TRIAL
)
)

14 COMES NOW, Defendant Steven Anderson, by and through undersigned counsel, and
15 demands a trial by jury pursuant to the Arizona Constitution, Article II, § 23, and A.R.S. §22-320.

16 This demand is supported by the accompanying Memorandum of Points and Authorities.
17

18 RESPECTFULLY SUBMITTED this 17 day of August, 2009.

19 MARC J. VICTOR, P.C.

20 By: 

21 Marc J. Victor
22 Attorney for Defendant

23 Original mailed to the Court, and a
24 copy mailed June 17, 2009, to:
25 Yuma County Attorney's Office
26 250 W. 2nd St., Suite G
Yuma, Arizona 85364

1 Here, the offense of Resisting Order Directing, Regulating, Controlling Motor Vehicle is
2 punishable by less than six months in jail. The offense carries no additional severe statutory
3 consequences. Therefore, the basis for Mr. Anderson's demand is that the charge has a common law
4 antecedent that carried the right to a jury trial. The charge of Resisting Order Directing, Regulating,
5 Controlling Motor Vehicle is tantamount to a charge of resisting arrest, a charge that is
6 constitutionally entitled to a jury trial.
7

8 In *State v. Le Noble*, 216 Ariz. 180, 181 (App. 2007), the defendant was charged with
9 possession of drug paraphernalia and resisting arrest, both class 6 felonies. Prior to trial, the state
10 reduced both charges to misdemeanors and the defendant was given a bench trial. *Id.* The defendant
11 was acquitted of the drug charge, but convicted of resisting arrest. *Id.* The appeals court found that
12 resisting arrest was a common law crime that afforded a jury trial prior to Arizona statehood and,
13 therefore, the defendant was entitled to a jury trial even though the offense was a misdemeanor. *Id.* at
14 183. As a result, the court vacated the defendant's guilty verdict. *Id.* at 185.
15

16 Here, the offense with which Mr. Anderson is charged is so similar to resisting arrest as to be
17 the same offense, but applied in a different context. The offense of resisting arrest, found in A.R.S.
18 §13-2508, consists of the following elements:

- 19 1. intentionally preventing or attempting to prevent;
- 20 2. a personally reasonably known to him to be a peace officer;
- 21 3. acting under such peace officer's official authority;
- 22 4. from effecting an arrest.

23 The offense of resisting an order directing, regulating, or controlling motor vehicle, found in
24 A.R.S. §13-2509, consists of the following elements:

- 25 1. knowing failing to obey;
- 26

- 1 2. a personally reasonably known to him to be a peace officer;
- 2 3. acting under such peace officer's official authority;
- 3 4. directing, regulating, or controlling his vehicle.

4 Both offenses have a *mens rea* of at least "knowing." Both offenses pertain to whether the
5 defendant reasonably knows the person to be a peace officer. Both offenses require the peace officer
6 to be acting in his official capacity. Both offenses deal with some type of resisting or refusing to
7 comply with the officer's authority. As the offense Mr. Anderson is charged with is so closely
8 analogous to resisting arrest, and resisting arrest is a misdemeanor offense constitutionally entitled to
9 a jury trial, Mr. Anderson is entitled to a jury trial.

10 III. CONCLUSION

11 Mr. Anderson, by virtue of his right to a jury trial as guaranteed by the Arizona Constitution,
12 Article II, § 23, and A.R.S. §22-320, demands a trial by jury on the charged offenses.

13 RESPECTFULLY SUBMITTED this 17 day of August, 2009.

14 MARC J. VICTOR, P.C.

15 By: _____

16 Marc J. Victor
17 Attorney for Defendant

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23 *EDC*