

Date May 21, 2012

VEHICLE IMPOUND APPEAL
OF NICK WELTHA

WHEREAS, Nick Weltha, 201 Locust Street, Apt. 134, owned a vehicle that was impounded by the City of Des Moines for illegal parking in Emergency No Parking zone; and

WHEREAS, Mr. Weltha requested and was granted an administrative hearing where he argued his case; and

WHEREAS, The Administrative Hearing Officer listened to all arguments and found that there was probable cause to impound Mr. Weltha's vehicle; and

WHEREAS, Mr. Weltha requested an opportunity to address the City Council on the denial of his appeal; and

WHEREAS, Mr. Weltha now has the opportunity to address the City Council; and

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: To uphold the decision of the Administrative Hearing Officer and deny Mr. Weltha's appeal.

MOVED BY _____ TO DENY APPEAL.

Alternative Two: To reverse the decision of the Administrative Hearing Officer and issue a certificate of no probable cause.

MOVED BY _____ TO GRANT APPLICATION.

FORM APPROVED:

Katharine Massier by Mark Gali

Katharine Massier
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

EXHIBITS FOR VEHICLE IMPOUND

**Nicholas Weltha
201 Locust Street, Apt. 134
Des Moines, IA 50309**

- | | |
|-------------------------|--|
| <u>EXHIBIT 1</u> | Request for Administrative Hearing
Letter Setting Date of Hearing |
| <u>EXHIBIT 2</u> | Hearing Officer's Decision |
| <u>EXHIBIT 3</u> | Appeal Request of Hearing Officer's Decision |
| <u>EXHIBIT 4</u> | Case Documents
Letter Setting Council Date |
| <u>EXHIBIT 5</u> | Transcript |
| <u>EXHIBIT 6</u> | Police Report and Citation |

EXHIBIT 1



Parking Ticket Appeal Form

(File in the Des Moines City Clerk's Office within seven business days after the issue date of the ticket)

If you do not receive a response within 30 days, please contact the City Clerk's Office at 515-283-4125

This is an administrative review process. Please complete this form if you believe the parking ticket received by you is unwarranted because the facts alleged on the ticket fail to show an ordinance was violated or the parking meter was inoperable and you reported it within 24 hours after issue of the ticket. An administrative review panel will consider the matter and make a determination on the merits of your case. **Be complete and include any documentation and/or diagrams, as this is the only evidence that will be considered by the review panel.** A copy of the panel's decision will be mailed to you.

Questions? Contact the City Clerk's Office at 515-283-4125

Please print or type

NAME	Nick Weltha
ADDRESS	201 Locust Street Apt #134
CITY, ST, ZIP	Des Moines, IA 50309
Daytime Phone Number	515-281-9760
Alternate Daytime Phone Number	515-460-6500
Drivers License Number	819 PP 8741
Ticket Number	330075115
Date Ticket Issued	3/26/2012
License Plate Number	115 ZPH
Vehicle Description (make, model, color)	Nissan Versa Blue

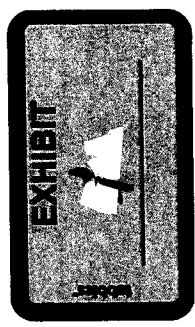
Violation Type (Check One)? (Emergency)

Overtime

Illegal

Handicapped (State Issued Permit # if applicable) _____

2012 APR - 8 PM 12:46
 FILED



REASON FOR APPEAL:

Please attach any diagrams or photographs you would like to be considered.

(See attached)

I was given no email notification of
maintenance work.

Caution, any statement made on this form may constitute an admission on your part.

Submit form to City Clerk's Office, 400 Robert D. Ray Drive, Des Moines, IA 50309, or Fax to 515-237-1645.

Signature *Rich Webb*

Today's Date 4/2/2012

If you receive a "not voided" decision, the matter may be appealed to the Polk County Associate District Court for judicial determination. If you request judicial determination, you must appear at the City Clerk's Office within seven business days of the date of the response, You must sign a promise to appear.

EXHIBIT 1



FOR SERVICE CALL 283-4973



EXHIBIT
1

EX. 1

INVOICE

G & S SERVICE INC
4100 E 16TH ST
DES MOINES IA 50313
515-276-1853

G & S Service, Inc/City Wide Towing

4100 E 16th Street
Des Moines, IA 50313
(515) 276-8068 Fax (515) 276-9256

Terminal ID: 00824180 0001

Invoice # 21019

3/26/12 11:01 AM

PO #: 12-8871

Invoice Date: 3/26/2012

Released by:

Tow Tag #

MASTERCARD
ACCT #: *****9529
CREDIT SALE
UID: 208610115961 REF #: 0994
BATCH #: 096 AUTH #: 000486

Vehicle Information:

Tow Information:

Year: 2012
Make: Nissan
Model: Versa
Color: Blue
Lic #: 115 ZDH
VIN: COVERED
Odometer:
Owner:

Location: Locust Bridge
Des Moines,
Cross Street:
Dispatched: 3/26/2012 7:56:50 AM
Arrived: 3/26/2012 8:09:44 AM
Completed: 3/26/2012
Truck Type: Flatbed
Agency:

AMOUNT

\$56.18

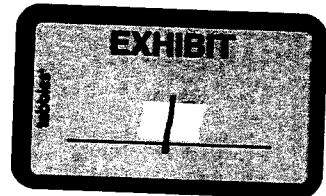
APPROVED

CUSTOMER COPY

Qty	Description	Price	Extended Price
1	Storage Day(s)	\$3.00	\$3.00
1	DMPD IMPOUND FLATBED	\$50.00	\$50.00
Sales Tax		\$3.18	
		Total	\$56.18

Certification: I the undersigned do hereby certify that I am legally authorized and entitled to take possession of the above described vehicle

Signature _____ Date _____



Ex. 1

NOTICE OF IMPOUNDMENT
DES MOINES, IOWA POLICE DEPARTMENT

CITY OF DES MOINES
Police Department

Mar 26/12

8:06AM
00-0002 001
#11014

Mitchf
CLERK

Impound Fee

\$20.00

*TTL
CASH

\$20.00
\$20.00

Thank You

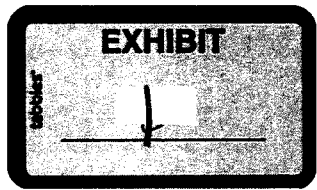
IF YOUR VEHICLE AND THE PERSONAL PROPERTY CONTAINED WITHIN, W
OR PARKED IN VIOLATION OF A CITY ORDINANCE, YOU HAVE A RIGHT, U
ADMINISTRATIVE HEARING TO DETERMINE WHETHER THERE WAS PROBA
VEHICLE. TO EXERCISE THIS RIGHT, YOU MUST FILE A CITY OF DES MOINE
HEARING FORM WITH THE CITY CLERK'S OFFICE AT 400 ROBERT D. RAY D
IMPOUNDMENT. SHOULD YOU REQUEST AN ADMINISTRATIVE HEARING, Y
VEHICLE BY POSTING A BOND IN AN AMOUNT SUFFICIENT TO COVER ALL
IMPOUNDMENT AND STORAGE OF THE VEHICLE. IF AT THE HEARING, THE
WAS NO PROBABLE CAUSE TO IMPOUND THE VEHICLE, THE BOND SHALL
TO THE CITY TREASURER OF A CERTIFICATE OF NO PROBABLE CAUSE AND
NOT REQUEST A HEARING; YOU MAY CLAIM YOUR MOTOR VEHICLE FROM
UPON PAYMENT OF ALL CHARGES ATTRIBUTABLE TO THE IMPOUNDMENT
THIS IS ONLY A RELEASE, WHICH ENTITLES YOU TO CLAIM YOUR VEHICLE
CONTAINED WITHIN FROM THE TOWING CONTRACTOR. THE VEHICLE AND ANY PERSONAL PROPERTY
CONTAINED WITHIN IS NOT CONSIDERED CLAIMED UNTIL ALL TOWING AND STORAGE FEES ARE PAID TO THE
TOWING CONTRACTOR. THE ISSUANCE OF THIS RELEASE DOES NOT AUTOMATICALLY STOP THE ACCRUAL OF
STORAGE FEES.

298925

12-8871

IMPOUND TAG NUMBER

CASE NUMBER



Ex. 1



April 6, 2012

Nick Weltha
201 Locust Street, Apt. 134
Des Moines, IA 50309

Re: Administrative Hearing-Vehicle Impound

An administrative hearing has been set for **Monday, April 16, 2012** in the City Council Chambers, south end of the second floor, **City Hall, 400 Robert D. Ray Drive**, at **9:15 A.M.** at which time you will be provided an opportunity to present evidence.

Parking is available on the streets surrounding City Hall--you will need change to pay the parking meters. Please alert the City Clerk's Office when you arrive.

Pursuant to Section 114-485.16 of the Municipal Code, (copy enclosed), you will be given an opportunity to be heard at the hearing.

Note: You must bring hard copy prints of any photographs you wish to have considered as evidence to the administrative hearing. Images on cell phones and computers will not be considered as they cannot be entered into the official record.

If you have questions in this regard, please call.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR/kh
Enclosure

cc: Hearing Officer
Assistant City Attorney
Staff Notification



EX 1

CITY OF DES MOINES

Office of City Clerk

To: Sgt. Beardsley
Police Traffic

Date: April 6, 2012

From: City Clerk's Office

RE: Vehicle Impound

Nicholas Weltha, 201 Locust Street, Apt. 1, Des Moines, IA has requested an impound hearing which has been scheduled for **Monday, April 16, 2012** in the Council Chambers, second floor of City Hall, 400 Robert D. Ray Drive at **9:15 A.M.**

Please inform(**ID NO. #7430 Kim Robinson** of the time, date and location of the hearing. I have attached a copy of the Vehicle Impound Recovery Reports for hearing preparation. **If the Police Officer is not available, please contact Karen at X1389 to make other arrangements.**

Thank you for your assistance.



Diane Rauh
City Clerk



EXHIBIT 2

City of Des Moines, Iowa
April 16, 2012 Administrative Hearing

In re:)	
)	
)	
)	DECISION AND ORDER
)	AND
NICHOLAS WELTHA,)	NOTICE OF APPEAL RIGHTS
Appellant)	
)	
)	

Nicholas Weltha appeared in his own behalf, as the title holder of record of a 2012 blue 4-door Nissan Versa (2012 IA License No. 115 ZDH). Parking Enforcement Officer Kim Robinson, with the Des Moines Police Department ("the DMPD"), appeared on behalf of the City of Des Moines (the "City").

Procedural History

At approximately 7:56 AM on March 26, 2012, Parking Enforcement Officer Robinson observed a 2012 blue 4-door Nissan Versa (2012 IA License No. 115 ZDH) illegally parked at a bagged meter on the Locust Street bridge in Des Moines, Polk County, Iowa; in violation with Section 114-361.17 of the City of Des Moines Municipal Code ("the Municipal Code"). On March 26, 2012, Parking Enforcement Officer Robinson identified the owner of the vehicle as Nicholas Weltha of 201 Locust Street, Unit 134, Des Moines, Iowa (Exhibit 6); issued Citation number 330075115 (Exhibit 11); and ordered the vehicle be impounded. At approximately 8:09 AM on March 26, 2012, G&S Service, Inc/City Wide Towing arrived on scene to tow the vehicle in question to impound (Exhibit 5). On March 26, 2012, the DMPD authorized the release of Mr. Weltha's vehicle after he paid the DMPD impound fee. The DMPD also provided Mr. Weltha written notice of his right to request an administrative hearing to contest the impound of his vehicle provided his request was filed with the City Clerk within 10-days. At approximately 11:01 AM on March 26, 2012, G&S Service, Inc/City Wide Towing released Mr. Weltha's vehicle to him after he paid all storage and impound costs (Exhibit 5). On April 3, 2012, Mr. Weltha's March 28, 2012 post marked request for an administrative hearing was filed with the City Clerk's Office (Exhibits 3 & 7). On April 6, 2012, the City Clerk sent a letter to Mr. Weltha that stated his administrative hearing had been scheduled for 9:15 AM on April 16, 2012 (Exhibit 1). The matter was so heard before the Administrative Hearing Officer.

Discussion

The sole issue is whether there was probable cause to impound Mr. Weltha's 2012 blue 4-door Nissan Versa (2012 IA License No. 115 ZDH) on Monday, March 26, 2012. Section 114-485.17 of the Municipal Code states:

"[T]he term 'probable cause to impound' shall mean such a state of facts as would lead a person of ordinary care and prudence to believe there was a breach of law for which the vehicle may be removed and impounded under section 114-485.11 of this article."

Furthermore, Section 114-485.11 of the Municipal Code provides:

"The police department . . . may remove and impound vehicles or cause vehicles to be removed and impounded when the vehicles are stopped or parked in

violation of this chapter or other city ordinances and, in so doing, may employ such means as are reasonably necessary.”

Parking Enforcement Officer Robinson testified that there was a special Civic Center performance on Monday March 26, 2012 that called for parking thirty-five to forty school buses in the downtown area; so meters were bagged on the Sunday afternoon before the event on the south side of the Locust Street bridge and the north side of the Walnut Street bridge by order of the Chief of Police under Section 114-361.17 of the Municipal Code. Parking Enforcement Officer Robinson testified that she arrived around 7:00 AM on the day in question and observed three vehicles parked at the bagged meters on the Locust Street bridge; noting two of them moved and the third, Mr. Weltha’s vehicle, remained so it was impounded at 7:56 AM.

Section 114-361.17 of the Municipal Code provides:

“(a) The chief of police may, upon issuance of an emergency order, cause temporary no parking signs to be posted on or about streets of the city. No person shall park in violation of signs so posted.

(b) A person who violates any provision of this section shall pay a fine of \$15.00.”

Parking Enforcement Officer Robinson testified that when she arrived on the bridge on Monday morning she observed the bags were still intact on every meter along the south side of the Locust Street bridge. Parking Enforcement Officer Robinson further testified that she verified with Officer Rich, prior to impounding Mr. Weltha’s vehicle, as to whether there were vehicles parked on the bridge when he bagged the meters. Parking Enforcement Officer Robinson testified that Officer Rich noted there was only one vehicle parked on the bridge when he bagged the meters and it was in the first parking spot on the bridge closest to the Embassy Suites, which was not where Mr. Weltha’s vehicle was parked.

Mr. Weltha testified that he parked his vehicle on Sunday and contends there were no bags on the meters on the side of the street where he parked, except maybe one bag on a meter that was broken. Mr. Weltha testified that he had no parking tickets on this vehicle and no outstanding tickets. Mr. Weltha further testified that he was not certain what he actually violated since there was no notification that he should not be parking there. However as noted above, the Chief of Police can order emergency no parking at any time under Section 114-361.17 of the Municipal Code. Furthermore, there is no requirement for providing notice for a Section 114-361.17 violation, which is reasonable given emergent circumstances.

Decision and Order

By a preponderance of all evidence in the record, it is found that a person of ordinary care and prudence would have been led to believe probable cause did exist when the DMPD caused Mr. Weltha’s vehicle and its contents to be impounded. Mr. Weltha is therefore held liable for all costs and fees associated with the March 26, 2012 impound of his 2012 blue 4-door Nissan Versa (2012 IA License No. 115 ZDH) and its contents; including the \$15.00 fine and any late fees associated with Citation Number 330075115.

Right of Appeal

As provided under Section 114-485.18 of the Municipal Code, this decision may be appealed to the City Council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided a written notice of appeal is filed with the City Clerk’s Office within seven days of this decision.

Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal this decision to the City Council.

This written ruling is hereby submitted on this 18th day of April, 2012 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.



Camille A. Valley
Administrative Hearing Officer

EXHIBIT 3



Herzberg, Karen <kmherzberg@dm.gov>

Appeal to Council on impounded vehicle

1 message

Rauh, Diane <dirauh@dm.gov.org>

Wed, Apr 25, 2012 at 2:34 PM

To: Karen Herzberg <KMHerzberg@dm.gov.org>, Kathy Massier <KJMassier@dm.gov.org>

Renaë is preparing the transcript now.

----- Forwarded message -----

From: **Nick Weltha** <nick.weltha@gmail.com>

Date: Wed, Apr 25, 2012 at 1:39 PM

Subject: Administrative Hearing for Nick Weltha (Citation Number 330075115)

To: cityclerk@dm.gov.org

Cc: cavalley@dm.gov.org

Ms. Rauh,

When I came in for this administrative proceeding, I was under the impression my vehicle was towed or impounded for violating parking meter time and having outstanding tickets, possibly under someone else's name as it was a brand new vehicle and new license plate for me. Now that I realize I was towed and impounded for being parked in a spot violating Section 114-361.17, I am even more convinced I should be fighting this ticket.

Below is my transcription of the comments made by the Parking Enforcement Officer specifically regarding the bagging of the meters. Please note that at no point in her testimony (full audio attached) does she state which side of the street the bagging has been done on, despite the administrative ruling of the Hearing Officer stating that the Parking Enforcement Officer did indicate the south side of the street.

First part of testimony

Officer Robinson: "The meters were bagged [umm] for the buses."

Second part of testimony

Hearing Officer Valley: "Were the bags, are the bags [so] such that, are they rem-, easily removed? I know sometimes you guys have problems with them, you know disappearing after you've bagged-"

Parking Officer Robinson: "Well, Denny Rich bagged them [umm] Sunday afternoon sometime. I don't know what time. And, when I got back... when I came in on [Sun-] Monday morning they were all on there."

Hearing Officer Valley: "Ok."

Parking Officer Robinson: "No bags were missing."

Hearing Officer Valley: "Ok."

I continue to assert that there were no bags on the south side of Locust Street except possibly the one bag for a broken meter which I did not park at. All bags were on the north side of the Locust Street bridge. Additionally, because I was without a vehicle, I had the pleasure of walking by the Walnut Street bridge on my way to the police station that morning, where I observed that the south side (wrong side) of the Walnut Street bridge was bagged. I believe there was a mix-up in the bagging order. That is understandable as these errors do happen.

What is not understandable why the city would fight to not cover the costs of a citizen who was towed in error.

Secondly, I am troubled by the last two sentences prior to the Decision and Order section of the administrative ruling. It states: "However as noted above, the Chief of Police can order emergency no parking at any time under Section 114-361.17 of the Municipal Code. Furthermore, there is no requirement for providing notice for a Section 114-361.17 violation, which is reasonable given emergent circumstances."

This wording troubles me, because it would (at first glance) appear that no requirement is needed at all to impound **any vehicle** parked on **any street** at **any time** in the city of Des Moines. But the egregiousness of that interpretation notwithstanding, **I would still contend that I did not violate Section 114-361.17** for two very significant reasons.

The first reason is that Part A of Section 114-361.17 states in the first sentence: "The chief of police may, upon issuance of an emergency order, cause temporary no parking signs to be posted on or about streets of the city." It has not been established that any no parking sign/bag was on my meter. I will swear under oath that neither before, nor after the ticket's issuance was there a bag on the meter where my vehicle was parked.

The second reason is that in the second sentence of the same section it states: "No person shall park in violation of signs so posted." I would also contend that I did not perform the action of parking in violation of a sign because there was never any sign at all, regardless of the absence of a notification period.

The Parking Enforcement Officer has not confirmed under oath which side of the street the bags were on. While such a thing could be inferred as it was by the Hearing Officer, I think it is imperative to get her exact word under oath that the meter at which my vehicle was parked was bagged with a no parking sign. It would be necessary in court, so it should be necessary during this process as well.

I do not believe that I should be punished for not violating the law, so I will be presenting my case to the City Council if the Hearing Officer is still not willing to reconsider her ruling. Thanks for your time.

—
Diane Rauh
City Clerk
City of Des Moines
515-283-4209

 **weltha.MP3**
3580K

EXHIBIT 4

Seybert, David <djsyber1@dmgov.org>

Vehicle Impound Report

1 message

Herzberg, Karen <kmherzberg@dmgov.org>
To: David Seybert <DJseybert@dmgov.org>

Wed, Apr 4, 2012 at 11:34 AM

Could you please send me a copy of the VIMP Report for Case 12-8871, Impound Tag No. 298925 for Nick Weltha. I am currently scheduling for Monday, April 16. Please let me know the availability of the officer as well.

Thank you.

Karen

--
Karen Herzberg
Executive Administrative Assistant
City Clerk's Office
Phone: 515-237-1389
Fax: 515-237-1645



APPEARS SHE IS
AVAILABLE ON THE 16th

PLEASE SEND THE NOTICE
TO SGT BEARDSLEY

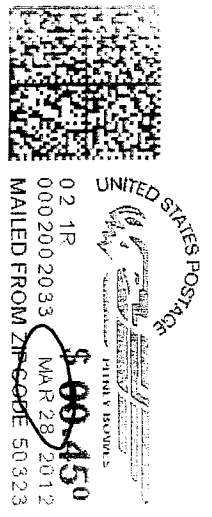




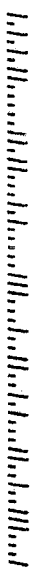
Administrative Services Bureau
25 E. 1st Street
Des Moines, IA 50309

Nicholas C. Wolter
201 Forest St #134
Des Moines, IA

SD309



5030931735



EX-4

NOTICE OF IMPOUNDMENT
DES MOINES, IOWA POLICE DEPARTMENT

CITY OF DES MOINES
Police Department

IF YOUR VEHICLE AND THE PERSONAL PROPERTY CONTAINED WITHIN, OR PARKED IN VIOLATION OF A CITY ORDINANCE, YOU HAVE A RIGHT, UPON REQUEST, TO AN ADMINISTRATIVE HEARING TO DETERMINE WHETHER THERE WAS PROBABLE CAUSE TO IMPOUND YOUR VEHICLE. TO EXERCISE THIS RIGHT, YOU MUST FILE A CITY OF DES MOINES HEARING FORM WITH THE CITY CLERK'S OFFICE AT 400 ROBERT D. RAY DRIVE, DES MOINES, IOWA 50313. SHOULD YOU REQUEST AN ADMINISTRATIVE HEARING, YOU MUST POST A BOND IN AN AMOUNT SUFFICIENT TO COVER ALL IMPOUNDMENT AND STORAGE OF THE VEHICLE. IF AT THE HEARING, THE CITY CLERK FINDS THERE WAS NO PROBABLE CAUSE TO IMPOUND THE VEHICLE, THE BOND SHALL BE REFUNDABLE TO THE CITY TREASURER OF A CERTIFICATE OF NO PROBABLE CAUSE AND YOU MAY CLAIM YOUR MOTOR VEHICLE FROM THE TOWING CONTRACTOR UPON PAYMENT OF ALL CHARGES ATTRIBUTABLE TO THE IMPOUNDMENT. THIS IS ONLY A RELEASE, WHICH ENTITLES YOU TO CLAIM YOUR VEHICLE FROM THE TOWING CONTRACTOR. THE VEHICLE AND ANY PERSONAL PROPERTY CONTAINED WITHIN IS NOT CONSIDERED CLAIMED UNTIL ALL TOWING AND STORAGE FEES ARE PAID TO THE TOWING CONTRACTOR. THE ISSUANCE OF THIS RELEASE DOES NOT AUTOMATICALLY STOP THE ACCRUAL OF STORAGE FEES.

8:06AM
00-0002 001
#11014

Mar 26/12
MITCH F
CLERK

Impound Fee	\$20.00
*TTL	\$20.00
CASH	\$20.00

----- Thank You -----

298925

12-8871

IMPOUND TAG NUMBER

CASE NUMBER

Tear Here

IMPOUND VEHICLE RELEASE
DES MOINES, IOWA POLICE DEPARTMENT
IMPOUND TOWING CONTRACTOR V10-027:
G&S SERVICES
 4100 EAST 16TH STREET
 DES MOINES, IOWA 50313
 515-276-8068

PAID
D.M.P.D.

Vehicles may only be claimed from 6:00 AM to 10:00 PM, Monday through Friday and from 8:00 AM to 4:00 PM weekends and holidays.

A. CASE NUMBER 12-8871 B. TAG NUMBER 298925

C. MAKE AND MODEL Nissan Versa D. LICENSE NUMBER 115Z04

E. VIN 879000

F. RELEASED BY: 411014 G. DATE RELEASED 26 Mar 12

