

August 21, 2007

Mark Holsten, Commissioner Minnesota Department of Natural Resources 500 Lafayette Road St. Paul, MN 55155	
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Re: *In the Matter of the Appeal of the Trespass Citations Issued to Antonio Miguel Olin and Matthew Thomas Douvier (Juveniles) Citation Nos. 136021 and 136022; OAH Docket No. 7-2000-17947-2*

Dear Commissioner Holsten:

On July 16, 2007, a Prehearing Conference was held in this matter by telephone. Thomas Douvier, father of Matthew Douvier, and Michael Olin, father of Antonio Olin, juveniles, and Conservation Officer Karl Hadrits participated. During the Prehearing Conference, the parties agreed to submit the matter to me for a decision without further hearing in order to resolve the matter, and they each affirmed that the facts as stated to me were true. The record closed on July 25, 2007, with the receipt of a late-filed document.

On July 2, 2006, two juveniles, Antonio Olin (age 15) and Matthew Douvier (age 16) were observed by Conservation Officer Karl Hadrits on a John Deere Gator-model off-road vehicle along County Road 36 in Crow Wing County. The vehicle was pulling a trailer, on which was mounted a jet ski.

Antonio Olin, born August 27, 1990, was driving the vehicle. Minn. Stat. § 84.802 requires a person driving an off-road vehicle to be at least 16 years old.

During the course of the conversation that followed Hadrits's stop of the vehicle, Matthew Douvier explained that his father, Thomas Douvier, gave him permission to drive the vehicle to the public access point on a lake a short distance from their residence to retrieve the jet ski. Matthew Douvier admitted to Officer Hadrits that he had driven the off-road vehicle to the access point (which Hadrits had not seen), and that Antonio Olin was driving it back at the time of the stop. Minn. Stat. § 84.804, subd. 1 prohibits the operation of an off-road vehicle within the right-of-way of a public road, unless the operation is on a trail designated by the Commissioner and approved by the unit of government having jurisdiction over the right-of-way. County Highway 36 is not such a road at the location where the off-road vehicle was stopped on July 2, 2006.

Thomas Douvier (Matthew's father) soon arrived and joined the discussion. Thomas Douvier told Officer Hadrits that he had requested his son to retrieve the jet ski, and that the incident was his fault. Officer Hadrits then issued a criminal citation to Thomas Douvier for violation of Minn. Stat. § 84.802 (c), which forbids the owner of an off-road vehicle to allow illegal operation of such a vehicle.

Thomas Douvier pleaded not guilty to the criminal charge, and it was dismissed by the Crow Wing County Attorney, who referred the case back to the Department of Natural Resources, to be handled "civilly".¹

The prosecutor "encouraged" Officer Hadrits to "issue the appropriate charges" against the juveniles², and Citations 136022 and 136021, respectively were issued that day to Matthew Douvier and Antonio Olin.

Matthew Douvier is charged with operating an off-road vehicle on a public road, in violation of Minn. Stat. § 84.804, and with driving an off-road vehicle without wearing a seatbelt (the vehicle in question was not equipped with one) in violation of Minn. R. 6102.0040, subp. (1)(E)³. Antonio Olin is charged with the same offenses as Matthew Douvier, and also for violating Minn. Stat. § 84.802 by operating an off-road vehicle while under the age of 16.

Even though the juveniles were allegedly operating the vehicle safely, and the vehicle is slow-moving (a "Slow-Moving Vehicle" sign was attached at its rear), it is undisputed that they violated the law by operating an off-road vehicle in the right-of-way of a public highway and that they were not deploying seatbelts. In addition, Antonio Olin was too young to drive. Accordingly, IT IS RECOMMENDED that the citations be AFFIRMED.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. Matthew Douvier and Antonio Olin, or their parents, may, within those five days, comment to the Commissioner, and the Commissioner must consider the comments. Once the Commissioner has made a final decision, a copy of that decision must be served upon Matthew Douvier and Antonio Olin, and their parents, and the Administrative Law Judge. The final order of the Commissioner may be appealed.⁴ If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of exceptions to the report, or upon the expiration of

¹ Order of Dismissal, February 6, 2007.

² Hadrits letter to parents, March 1, 2007.

³ Matthew Douvier's citation also charged him with operating the vehicle without a driver's license. That charge has been withdrawn, since Matthew Douvier has established he had a valid driver's license on the day in question (July 2, 2006).

⁴ Minn. Stat. §§ 14.63 to 14.69.

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the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

I am closing this Office's file in this matter, and returning the record to you.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: (612) 349-2542

RCL:mo

cc: Thomas Douvier
Michael Olin
Officer Karl Hadrits
Pat Watts, DNR