

Paragraphs 1, 3, 4 and 6 of defendant Hege's preliminary objections, and paragraphs 2 and 3 of defendant Christman's preliminary objections are hereby sustained.

#### ORDER OF COURT

NOW, this 22nd day of February, 1982, defendant Hege's preliminary objections 1, 2, 3, 4 and 6, and defendant Christman's preliminary objections 1, 2 and 3 are sustained. Defendant Hege's preliminary objections 5 and 7, and defendant Christman's preliminary objection 4 are rendered moot by plaintiff's withdrawal of paragraphs 9(g), 24(g) and the implied warranty of habitability.

Defendant is granted twenty (20) days from date to file an amended complaint conforming to the above Opinion.

Exceptions are granted the plaintiff.

COMMONWEALTH v. RUNK, C.P. Franklin County Branch,  
No. 59 of 1981

*Criminal Law - Possession of controlled substance - Search and Seizure - Pa. Game Officer*

1. A State Game Enforcement Officer had no authority to search a vehicle after observing some litter near the vehicle.

#### MEMORANDUM AND ORDER

EPPINGER, P.J., February 3, 1982:

James Dale Runk, Jr., the defendant, was charged with possession of a controlled substance, a roach of marijuana. He has moved to suppress the evidence that was seized.

Runk's vehicle was in a parking lot on State Game Lands. A State Game Officer in civilian clothes noticed some litter near the car. He approached the car, worked the flashlight through it and saw a cooler inside. He found some alcoholic beverages inside the car and called the State Police, staying with the defendant until the latter arrived.

The game officer's interest in defendant's car was the

result of a litter problem in the parking lot. There was nothing in his evidence to establish that the two beer cans he saw near the defendant's car were put there by the defendant or anyone associated with him. No litter or game law violations were charged against the defendant.

When the police arrived they went through the car more thoroughly, found no more alcoholic beverages, but did look in an open ash tray while inside the car using a flashlight and saw a marijuana roach. On further investigation they found a hash pipe. When the search was conducted all of the occupants were required to get out of the car and the officer was looking for whatever he could find.

Defendant, testifying on his own behalf, said that he officer had to open the ash tray to see whether there was a roach in it or not because he always keeps it closed.

It really doesn't make any difference whether the ash tray was open or closed because the officers had no right to search the defendant's vehicle. The facts do not even suggest that there was probable cause to believe that the automobile contained any contraband. But beyond that, the game law enforcement officer had no authority at all to search the car. *Commonwealth v. Mayhugh*, 75 D&C 2d 552 (Somerset Co., 1976), and there was no suggestion that a search was necessary for the protection of the officers.

We therefore find that the search was improper and that the evidence must be suppressed.

#### ORDER

February 3, 1982, the evidence seized by the officers from the defendant's automobile and testimony relating to its discovery and existence are suppressed.