Constitutional Law—Fourth Amendment Search and Seizure—We've Got Ourselves in a Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences. Pickle v. State, 2015 Ark. 286, 466 S.W. 3d 410

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I. INTRODUCTION

In Pickle v. State, the Supreme Court of Arkansas held that an individual engaged in hunting or fishing may not be subject to a criminal investigation by a law enforcement officer who does not possess a reasonable suspicion that the person has violated the law. 1 It is a well-established principle of Fourth Amendment jurisprudence that a law enforcement officer cannot conduct a warrantless search of an individual without some reasonable and articulable suspicion that the person is engaged in criminal activity. 2 The significance of the holding in Pickle is that it creates a limitation on the authority of Arkansas State Game and Fish Commission (AGFC) officers that does not apply to other state law enforcement officers. 3 Formulated as an application of Arkansas Rule of Criminal Procedure 3.1, which governs investigative stops by law enforcement, a new rule of Fourth Amendment law emerged from this case. 4

The new rule states that AGFC officers who conduct lawful searches of hunters for the purpose of ensuring compliance with game laws may not extend those searches to include an inquiry into a detained individual’s criminal history, unless a reasonable suspicion of criminal activity develops during the check for regulatory compliance. 5 Whereas, when other law enforcement officers obtain an individual’s identity during a lawful detention, such as a traffic stop, that information can be used to conduct a search into the detainee’s criminal history. 6

As a consequence of this restriction on the authority of AGFC officers, an Arkansas hunter who has given her name and identification to an AGFC officer during a lawful search now has a reasonable expectation of privacy in her criminal record. 7 This expectation of privacy prevents an officer from investigating the sportsman’s criminal history to check for outstanding war-

1. See 2015 Ark. 286, at 6, 466 S.W.3d 410, 413.
2. See Ark. R. CRIM. P. 3.1; Terry v. Ohio, 392 U.S. 1, 21 n.18 (1968).
rants. The result of the Pickle holding is a new form of administrative search in which an AGFC officer may not run a check for outstanding warrants during a check for compliance with game laws.

This new “Pickle search” has created uncertainty in three areas of the law: (1) the legal authority possessed by AGFC officers to conduct suspicionless administrative inspections, (2) the legal authority possessed by law enforcement officers when conducting investigative stops, and (3) the expectation of privacy possessed by individuals with regard to their criminal records.

This note begins by reviewing the law of search and seizure under the Fourth Amendment and the Constitution of Arkansas. In particular, the background section focuses on the law regarding warrantless and suspicionless stops that are made by law enforcement officers to check the regulatory compliance of individuals who are engaged in privileged or highly regulated activities.

With the legal background set forth, this note then describes the factual and procedural history of Pickle, followed by an examination of the opinion within the factual and legal framework. This analysis elucidates several inconsistencies in the Supreme Court of Arkansas’s reasoning and brings to light some strong implications that flow from the court’s holding.

This note argues that in Pickle the Supreme Court of Arkansas needlessly condoned the authority of AGFC officers to conduct random, targeted, and suspicionless searches of sportsmen who are engaged in the activities of hunting or fishing. Such authority goes beyond the limits of Fourth Amendment search and seizure that have been established by the Supreme Court of the United States.

At the same time, the Supreme Court of Arkansas needlessly created the Pickle search, which expands the individual hunter’s reasonable expectation of privacy to include her criminal record. In other words, the criminal record of a sportsman, and possibly any citizen engaged in a closely regulated activity, cannot be searched during a seizure initiated for the purpose of checking regulatory compliance.

The Pickle search is a useful precedent that will be cited in numerous motions to suppress evidence. Though the court tried to distinguish the Pick-
le search from an investigative search, it is especially likely that *Pickle* will be cited in motions to suppress evidence that has been obtained during an investigative stop, or during a routine traffic stop.

As an alternative to creating a Fourth Amendment novelty, this note argues that the court could have used this opportunity to clarify the authority possessed by AGFC officers. Furthermore, this could have been done without diminishing the efficacy of AGFC officers in policing game laws for the purpose of preserving state resources. In *Delaware v. Prouse*, the Supreme Court of the United States specified procedures for keeping suspicionless seizures from violating the reasonableness requirement prescribed by the Fourth Amendment. The methods set out in *Prouse*, and previously adopted by the Supreme Court of Arkansas, can be applied to the duties of AGFC officers with reasonable ease.

This note concludes by restating the ways in which the *Pickle* opinion will affect Arkansas law outside of the AGFC and sportsman context, and how the court could have avoided this outcome.

II. BACKGROUND

A. The Fourth Amendment

The Fourth Amendment provides a right to be free from unreasonable searches and seizures. A search violates the Fourth Amendment when it violates a person’s “reasonable expectation of privacy.” One’s reasonable expectation of privacy has its source outside the Fourth Amendment, and conforms to such boundaries as are “recognized and permitted by society.” A seizure occurs when a reasonable person under the circumstances is detained and believes that she is not free to leave.

16. *See id.*
18. *See infra* Parts IV, V.
19. U.S. CONST. amend. IV.
Article 2, section 15, of the Arkansas Constitution provides the same protection as the Fourth Amendment. However, there is no constitutional objection to a rule of law that extends individual liberty beyond the minimum required by the Fourth Amendment.

B. Warrantless Search and Seizure

Generally, the Fourth Amendment requires that a warrant be issued upon probable cause to authorize a search or seizure of citizens or their property. The warrant requirement is in place to ensure that intrusions upon individuals are reasonable. In order to be reasonable, a warrantless search must fall within a specific exception to the warrant requirement.

1. Administrative or Regulatory Search Exception to the Fourth Amendment’s Warrant Requirement

The difficulty of enforcing broad regulatory regimes has been recognized by both the Supreme Court of the United States and the Supreme Court of Arkansas. Because regulatory enforcement serves a vital purpose for society at large, and for the interests of each state, the Fourth Amend-
ment’s reasonableness requirement has been adapted to include a balancing test for certain highly regulated activities or industries. This balancing test can be used to relax the traditional Fourth Amendment requirements of obtaining a warrant, possessing probable cause, or developing reasonable suspicion prior to detention or search.

The test determines the permissibility of a particular law enforcement practice by weighing its intrusion on individual liberty against its promotion of legitimate government interests. To retain reasonableness under the Fourth Amendment, it is usually required that the facts of the intrusion be measurable against some form of objective standard. If implementation of the balancing test removes the need for any individualized suspicion before allowing a seizure or search, then other methods must be in place to assure that an individual’s reasonable expectation of privacy is not “subject to the discretion of an official in the field.”

Under certain circumstances, consent to regulatory inspection accompanies participation in a particular activity. This consent by participation can prevent an individual from refusing to allow a surprise inspection. However, such extreme relaxation of Fourth Amendment protection seems to be specific to the commercial context. This is due to the fact that privacy intrusions upon individuals weigh more heavily in the balancing test than intrusions upon commercial entities.

If it is not determined that consent to a search accompanies participation in a particular activity, then regulatory inspections that are not premised on any individualized, articulable suspicion must be undertaken according to previously specified neutral criteria. Requiring a plan that places neutral limitations on the activity of individual officers prevents arbitrary invasions

31. Id. at 654.
32. Id.
37. See id.
of individual liberty by the unfettered discretion of officers in the field, thereby ensuring an individual’s expectation of privacy.

2. Investigative Stop Exception to the Fourth Amendment’s Warrant Requirement

In *Terry v. Ohio*, the Supreme Court of the United States held that an officer who does not have a warrant or probable cause can detain an individual for investigative purposes. The officer’s investigative purposes must be founded on a reasonable, articulable suspicion that the individual is involved in criminal activity. The authority of law enforcement officers to conduct investigative stops in Arkansas is codified as Arkansas Rule of Criminal Procedure 3.1.

The reasonable suspicion required to make an investigative stop must be more than a bare suspicion, and not purely conjectural. The substance of

40. Brown, 443 U.S. at 51 (citing Prouse, 440 U.S. at 654–55, Brignoni-Ponce, 422 U.S. at 882).
41. 392 U.S. 1, 22, 30 (1968).
42. Id. at 21.
43. See Ark. R. Crim. P. 3.1.
44. Ark. R. Crim. P. 2.1. The Comment to Rule 2.1 contains fourteen factors to be considered when determining whether an officer has reasonable suspicion that is sufficient to detain a person pursuant to Rule 3.1. Muhammad v. State, 337 Ark. 291, 298, 988 S.W.2d 17, 21 (1999). These factors have been codified. See Ark. Code Ann. § 16-81-203 (West 2015). The following list of factors is illustrative and not exhaustive. See id.

(1) The demeanor of the suspect;
(2) The gait and manner of the suspect;
(3) Any knowledge the officer may have of the suspect’s background or character;
(4) Whether the suspect is carrying anything, and what he is carrying;
(5) The manner in which the suspect is dressed, including bulges in clothing, when considered in light of all of the other factors;
(6) The time of the day or night the suspect is observed;
(7) Any overheard conversation of the suspect;
(8) The particular streets and areas involved;
(9) Any information received from third persons, whether they are known or unknown;
(10) Whether the suspect is consorting with others whose conduct is “reasonably suspect”;
(11) The suspect’s proximity to known criminal conduct;
(12) Incidence of crime in the immediate neighborhood;
(13) The suspect’s apparent effort to conceal an article;
(14) Apparent effort of the suspect to avoid identification or confrontation by the police.
the suspicion must be that an individual is committing, has committed, or is about to commit a felony, or a misdemeanor involving danger to persons or property. 45 The presence of reasonable suspicion depends upon whether, in considering the totality of the circumstances, an officer has specific, particularized, and articulable reasons indicating that a person may be involved in criminal activity. 46

Furthermore, the actions of an officer in an investigative stop must be reasonably necessary to obtain or verify the identification of a person, or to determine the lawfulness of her conduct. 47 Detention during an investigative stop is limited to fifteen minutes, or such time that is reasonable under the circumstances, after which an officer must release the detainee or arrest the individual and charge her with an offense. 48

3. Warrants Checks and Searches into Criminal History

In order to ensure the safety of law enforcement during an investigative stop, an officer may frisk a detainee’s clothing for weapons and search the surrounding area. 49 It is likewise clear that a search into an individual’s criminal history to determine if any outstanding warrants exist for the detainee is an accepted part of routine investigative procedure during a traffic stop. 50 Such investigative measures are part of a reasonable investigative detention within the lawful detention for a traffic violation. 51

On the other hand, under Arkansas law, it appears to be an open question whether an officer may use a pedestrian’s identity to check for outstanding warrants as part of the procedure inherent in an investigative stop. 52

48. Id.
50. See Rodriguez v. United States, 135 S. Ct. 1609, 1615 (2015) (noting that an officer may check for outstanding warrants during a traffic stop); United States v. Lego, 855 F.2d 542, 545 (8th Cir. 1988) (acknowledging the propriety of a warrants check as part of an investigatory traffic stop); Lilley v. State, 89 Ark. App. 43, 50, 199 S.W.3d 692, 696 (2004) (approving additional steps such as checking criminal history during a traffic stop).
51. Lilley, 89 Ark. App. at 50, 199 S.W.3d at 696.
52. There is some authority supporting the performance of a warrants check during an investigative stop of a pedestrian in Arkansas. See Jackson v. State, 2010 Ark. App. 359, at 23, 374 S.W.3d 857, 871 (acknowledging the trial court’s finding that an investigative search conducted after a warrants check proved there were no outstanding warrants for the detainee was a reasonable extension of detention). Although, it is clear that an officer may not “stop a
In other jurisdictions, performing a warrants check on a pedestrian as part of an investigative stop has been upheld by numerous state and federal courts.\footnote{53}

Similarly, regulatory compliance checks imposed on individuals allow officers to verify the identity of any persons detained.\footnote{54} In the context of motorist checkpoints, the identification of a driver can be used to run a check for any outstanding warrants.\footnote{55} It should be noted that in this context, there is no need for an officer to possess suspicion toward an individual, it is merely by engaging in the regulated activity that one is lawfully subject to a brief detention and search.\footnote{56} The need for reasonable suspicion that generally prevents intrusion into an individual’s privacy is outweighed by the interests of the state in implementing a program of regulatory enforcement.\footnote{57}

C. The Authority of AGFC Officers

The conservation and regulation of Arkansas’s game and wildlife resources, and the administration of laws pursuant thereto, are vested in the AGFC.\footnote{58} All personnel of the AGFC have the authority to make arrests for violation of the game and fish laws.\footnote{59}

citizen at any time, without reasonable grounds for suspicion, request identification, and arrest and search the citizen if his identity uncovers an outstanding felony warrant.” Meadows v. State, 269 Ark. 380, 383, 602 S.W.2d 636, 638 (1980). And there may be limits on the legality of performing a warrants check without detention. See Stephens v. State, 342 Ark. 151, 155, 28 S.W.3d 260, 262 (2000) (declining to respond to Appellant’s argument that information of an outstanding warrant obtained from the Arkansas Crime Information Computer prior to detention, and only made available by asking a store clerk the Appellant’s name, was illegally obtained).

53. \textit{See} \textit{5 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment} § 9.2(f) n.208 (5th ed. 2014). This treatise relies on the holdings of many cases including: United States v. Burleson, 657 F.3d 1040, 1047 (10th Cir. 2011) (“[T]he same rationale that underlies our conclusion as to the permissibility of warrants checks in the motorist context applies with equal force in the pedestrian context.”); Foley v. Kiely, 602 F.3d 28, 33 (1st Cir. 2010) (a suspected trespasser’s inability or unwillingness to provide his Social Security number combined with an attempt to avoid contact with police, served as a basis for the police to conduct a warrants check through the National Crime Information Center); United States v. Hutchinson, 408 F.3d 796, 799 (D.C. Cir. 2005) (“[I]t was reasonable for the police to retain Hutchinson’s identification on site in order to attempt a ‘WALES’ check and thereby prolong the Terry stop for an additional two to five minutes.”); State v. Walker, 251 P.3d 618, 628 (Kan. 2011) (approving the use of a pedestrian’s identification to run a computer records check); Wilson v. State, 874 P.2d 215, 224 (Wyo. 1994) (NCIC check of a pedestrian requires reasonable suspicion). \textit{See} \textit{LaFave, supra}.


55. \textit{See} \textit{Mullinax}, 327 Ark. at 50, 938 S.W.2d at 806.

56. \textit{See} \textit{id.} at 47, 938 S.W.2d at 804.

57. \textit{See} \textit{Sitz}, 496 U.S. at 455.

58. \textit{Ark. Const.} amend. XXXV, § 1.

The Arkansas Legislature has declared all game and fish in Arkansas to be the property of the state.\(^\text{60}\) The Legislature also declared that the hunting, killing, and catching of Arkansas’s game and fish are privileges.\(^\text{61}\) Any officer with authority to enforce game laws may search any person, railroad train, boat, place of business, or any other public carrier to ascertain whether the game and fish laws are being violated.\(^\text{62}\)

In the performance of their duties, AGFC officers may stop and detain any person who they reasonably suspect is, or recently has been, involved in any hunting or fishing to conduct an administrative inspection for the purpose of determining whether the person is in compliance with game laws.\(^\text{63}\) For the purpose of distinguishing those who may be subject to regulatory enforcement of game laws from the rest of the population, the possession of firearms while in any location known to be game cover shall be considered prima facie evidence that the possessor is hunting.\(^\text{64}\) Additionally, possession of instruments usually used for fishing while in the vicinity of lakes and streams shall be considered prima facie evidence that the possessor is fishing.\(^\text{65}\)

It is a misdemeanor to flee from an AGFC officer to avoid imminent inspection, detention, or arrest.\(^\text{66}\) Fleeing from an AGFC officer can be punishable by a fine up to $2,500 and a jail sentence up to sixty days.\(^\text{67}\) The AGFC has made it a misdemeanor to hunt or fish without possessing on one’s person a required license.\(^\text{68}\) Hunting or fishing without having on one’s person the required license can be punishable by a fine up to $1,000 and a jail sentence up to thirty days.\(^\text{69}\) Furthermore, hunting or fishing without first having obtained a hunting or fishing license is a misdemeanor punishable by a fine up to $200.\(^\text{70}\)

For the purposes of making arrests, full-time AGFC officers are certified law enforcement officers with authority that is tantamount to other law enforcement officers.\(^\text{71}\) It has been noted by the Supreme Court of Arkansas

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61.  \textit{Id.}
63.  \textit{Arkansas State Game and Fish Commission Code Book}, § 01.00-B (2015).
65.  \textit{Id.}
67.  \textit{Id.} § 01.00-I (2015).
69.  \textit{Arkansas State Game and Fish Commission Code Book}, § 01.00-I (2015).
71.  \textit{Id.} § 16-81-106 (Supp. 2015).
that the rules governing an officer’s authority to conduct investigative stops apply to AGFC officers as well.\textsuperscript{72}

\textbf{III. FACTS AND PROCEDURAL HISTORY}

On November 18, 2012, Jimmy Paul Pickle (“Pickle”) and two other duck hunters prepared to eat breakfast after a morning of shooting waterfowl over an oxbow lake along the Cache River in Craighead County.\textsuperscript{73} Pickle’s hunting party did not know that for the past two hours they had been observed by two AGFC law enforcement officers.\textsuperscript{74} Both officers testified that during those two hours, they had not observed any violations of hunting laws, nor did they observe any indications that a game law might have been violated.\textsuperscript{75}

Nonetheless, the officers made contact with Pickle’s party in order to perform a routine check for compliance with hunting laws.\textsuperscript{76} The officers asked the hunters to present their licenses, then inspected their guns, and searched their game bags.\textsuperscript{77} One of the officers issued a citation to one of Pickle’s hunting party for a firearm violation, but no other citations were issued at that time.\textsuperscript{78} It did come to light, however, that Pickle did not have a valid hunting license on his person, although he said he had left it in his truck.\textsuperscript{79}

The officers then moved a short distance from the hunting party, to a point where they could not be observed, and called to Little Rock dispatch asking for a “10-26” hunting and fishing license check and a “10-51” check through the National Crime Information Center to see if Pickle had any outstanding warrants.\textsuperscript{80} These checks revealed that Pickle had a valid hunting license, and that he was a convicted felon.\textsuperscript{81}

The officers arrested Pickle for being a felon in possession of a firearm, and during a search incident to the arrest, the officers found a quantity of methamphetamine and a glass pipe.\textsuperscript{82} Pickle filed a motion in the Craighead County Circuit Court to have this evidence suppressed, and it was denied.\textsuperscript{83}

\textsuperscript{72} State v. Allen, 2013 Ark. 35, at 4, 425 S.W.3d 753, 757.
\textsuperscript{74} Pickle, 2015 Ark. 286, at 2, 466 S.W.3d at 411.
\textsuperscript{75} Id., 466 S.W.3d at 411.
\textsuperscript{76} Id. at 3, 466 S.W.3d at 411.
\textsuperscript{77} Id., 466 S.W.3d at 411.
\textsuperscript{78} Id., 466 S.W.3d at 411.
\textsuperscript{79} Id., 466 S.W.3d at 411.
\textsuperscript{80} Id., 466 S.W.3d at 411.
\textsuperscript{81} Pickle, 2015 Ark. 286, at 3, 466 S.W.3d at 411–12.
\textsuperscript{82} Id., 466 S.W.3d at 412.
Pickle appealed, arguing that the AGFC officers unlawfully detained and searched him in violation of his rights under the Fourth Amendment and article 2, section 15, of the Arkansas Constitution.\footnote{Id. at 4, 466 S.W.3d at 412.}

The Arkansas Court of Appeals reversed the circuit court’s decision.\footnote{Id. at 9, 453 S.W.3d at 163.} In doing so, the court of appeals held that AGFC officers must have reasonable suspicion in order to legally conduct routine checks for compliance with hunting laws.\footnote{Id., 453 S.W.3d at 163–64 (citing Delaware v. Prouse, 440 U.S. 648, 661 (1979); State v. Allen, 2013 Ark. 35, at 4, 425 S.W.3d 753, 757).} The court further held that in the absence of reasonable suspicion, a stop or search by law enforcement must be conducted under a plan of explicit, neutral limitations that prevent officers from exercising unbridled discretion.\footnote{Pickle, 2015 Ark. 286, at 1, 466 S.W.3d at 411 (citing Fowler v. State, 2010 Ark. 431, 1, 371 S.W.3d 677, 679).}

The Supreme Court of Arkansas granted the State’s petition for review, and treated the appeal as if it had originally been filed in the state supreme court.\footnote{Pickle, 2015 Ark. 286, at 7, 466 S.W.3d at 414.} In reversing the circuit court’s decision, the Supreme Court of Arkansas vacated the court of appeals’ opinion.\footnote{Id. at 6, 466 S.W.3d at 413 (citing State v. Baldwin, 475 A.2d 522 (N.H. 1984)).}

IV. THE PICKLE HOLDING AND ITS SIGNIFICANCE

A. The Court’s Holding

In *Pickle*, the Supreme Court of Arkansas held that the investigation into Pickle’s criminal past and the subsequent search of his person went far beyond the scope of any administrative search conducted for the purpose of investigating Pickle’s compliance with hunting laws.\footnote{Pickle, 2015 Ark. 286, at 3, 466 S.W.3d at 411–12.} It is true that searching Pickle’s person went far beyond the scope of an administrative search, but that search was incident to his arrest for being a felon in possession of a firearm.\footnote{See ARK. R. CRIM. P. 12.1.} Such a search would be governed by Arkansas Rule of Criminal Procedure 12.1, which permits an officer who is making a lawful arrest of an individual to conduct a warrantless search of that individual.\footnote{See ARK. R. CRIM. P. 12.1.} But the idea that searching into Pickle’s criminal history went far beyond the scope of an administrative search that was administered to ensure compliance with the
laws governing a highly regulated activity is something new and unprecedented.93

The effect of this holding is a new rule of Fourth Amendment jurisprudence. The new rule limits the administrative search exception to the Fourth Amendment in the context of AGFC officers inspecting sportsmen.94 Now, when an AGFC officer inspects a hunter and her paraphernalia for compliance with hunting regulations, the officer cannot legally obtain the hunter’s identity and then use it to look into the hunter’s criminal history.95 The Pickle search is a new extension of liberty under the Fourth Amendment, an administrative search under which a person’s identity cannot be used to check criminal history.96

B. The Impact of the Pickle Holding

Three difficulties arise from the Pickle holding. First, in not deciding whether the AGFC officers who arrested Pickle were acting under the restraint of neutral limitations, the Supreme Court of Arkansas has tacitly endorsed the type of targeted, suspicionless stalking and detention of hunters that seems so objectionable in this case.97 Second, it now appears that an officer of the law can obtain a person’s identity during any type of lawful investigative stop and use it to search the detainee’s criminal history.98 This is difficult to comprehend because the court also created the impression that during a routine traffic stop, the administrative procedure of checking for outstanding warrants may exceed the scope of authority that an officer has pursuant to issuing a citation for the traffic stop.99 And third, according to the court’s own reasoning, the AGFC officers possessed the requisite reasonable suspicion to conduct a Rule 3.1 detention and search when they checked Pickle’s criminal history and discovered that he was a convicted felon.100

93. See supra notes 54–57 and accompanying text.
94. See Pickle, 2015 Ark. 286, at 6–7, 466 S.W.3d at 413–14.
95. Id., 466 S.W.3d at 413–14.
96. In other contexts, checking an individual’s criminal history is not considered an intrusion on an individual’s Fourth Amendment liberty. See Rodriguez v. United States, 135 S. Ct. 1609, 1615 (2015) (noting that an officer may check for outstanding warrants during a traffic stop); United States v. Lego, 855 F.2d 542, 545 (8th Cir. 1988) (acknowledging the propriety of a warrants check as part of an investigatory stop); see also Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 186 (2004) (approving the need to obtain a detainee’s name in the course of a Terry stop).
98. See id. at 6–7, 466 S.W.3d at 413–414.
99. See id., 466 S.W.3d at 413–14.
100. See id., 466 S.W.3d at 413–14.
1. The Effect of Avoiding the Fourth Amendment and Some Preferable Alternatives

Because it is illegal to flee from an AGFC officer who is attempting to perform an administrative inspection, Pickle was subject to a seizure that triggered all the protections afforded by the Fourth Amendment.\textsuperscript{101} It is also established that the officers who arrested Pickle did not possess any reasonable suspicion that Pickle or his party had violated any hunting laws.\textsuperscript{102}

The requirement of the Fourth Amendment, that searches of individuals by law enforcement must be reasonable, creates a balancing test that is used by courts to judge the permissibility of a particular law enforcement practice.\textsuperscript{103} The balancing test weighs the intrusion on the individual’s expectation of privacy against the promotion of legitimate government interests.\textsuperscript{104} But in those situations where the balancing test allows for a government official to act against the individual’s privacy without the requirement that the official possess any quantum of individualized suspicion regarding the individual, then the official must be acting in accordance with a “plan embodying explicit, neutral limitations.”\textsuperscript{105}

The Supreme Court of Arkansas said:

> Even assuming, but not deciding, that it was appropriate for the officers to conduct a search absent a reasonable, articulable suspicion, the evidence used to charge Pickle of possession of a firearm, possession of a controlled substance, and possession of drug paraphernalia, was adduced by the officers after they had completed any inquiry into Pickle’s compliance with state and federal regulations pertaining to the harvest of waterfowl.\textsuperscript{106}

By assuming the appropriateness of the officers’ conduct under the Fourth Amendment without endorsing it, the court creates some confusion in this opinion. If the officers’ search of Pickle was not appropriate, then the evidence obtained should be suppressed and the analysis stops there. The evidence was suppressed in this case, but not because the officers’ suspicionless and targeted search of Pickle violated the Fourth Amendment.\textsuperscript{107} Assuming the officers’ administrative search of Pickle was appropriate, and continuing the analysis to include Rule 3.1, leads to the inference that the

\begin{footnotes}
\item[101.] See supra notes 22, 66 and accompanying text.
\item[102.] Pickle, 2015 Ark. 286, at 2, 466 S.W.3d at 411.
\item[103.] Id. at 4, 466 S.W.3d at 412 (quoting Delaware v. Prouse, 440 U.S. 648, 654 (1979)).
\item[104.] Pickle, 2015 Ark. 286, at 4, 466 S.W.3d at 412 (quoting Prouse, 440 U.S. at 654).
\item[106.] Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
\item[107.] See id. at 7, 466 S.W.3d at 414.
\end{footnotes}
administrative search was initially appropriate. Otherwise, there is no reason to extend the analysis beyond the strictures of the Fourth Amendment.

The court explained its reason for sidestepping the Fourth Amendment issue by saying that the record in the trial court was not developed in regard to whether the officers who arrested Pickle were acting under a plan embodying explicit neutral limitations. After this opinion, it appears that AGFC officers have the ability to randomly target hunters and subject them to administrative inspections for the purpose of ensuring compliance with game laws. However, this appearance is derived from the court’s avoidance of the issue. This creates uncertainty about the authority an AGFC officer possesses in the field.

It seems that the court wanted to suppress the evidence against Pickle without deciding whether the officers were acting concordantly with the Fourth Amendment. There are several ways that the court could have reached this result without resorting to the creation of the Pickle search.

a. The dissent’s alternative to avoiding the Fourth Amendment

One way to avoid this outcome is developed by the dissenting opinion in Pickle. The dissent cites a concurring opinion from Delaware v. Prouse in which Justice Blackmun suggested that the use of neutral limitations in the context of game wardens may be too restrictive to the duties that game wardens must perform. Justice Blackmun went on to state that he believed the Court would apply the balancing test differently in this context so as to not deprive game wardens of the authority needed to perform their duties.

The dissent argues that Arkansas’s interests in regulating its wildlife resources are so profound that a straight application of the Fourth Amendment balancing test weighs in favor of allowing AGFC officers to randomly target hunters for compliance checks without possessing any reasonable suspicion that the law has been violated. In making this argument, the dissent followed the reasoning from Elzey v. State.

In Elzey, the Georgia Court of Appeals held that wildlife officers may approach hunters, without any suspicion that the hunters have violated the law, in order to check for compliance with hunting regulations and to question hunters about their hunt. The Georgia court found it reasonable under

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108. *Id.* at 5, 466 S.W.3d at 412–13 (citing *Allen*, 2013 Ark. 35, at 5, 425 S.W.3d at 757).
110. 440 U.S. at 664 (Blackmun, J., concurring).
111. *Id.*
114. *Id.* at 755.
the Fourth Amendment for officers to detain hunters, absent any reasonable suspicion, because hunters, their gear, and their take from the hunt are subject to a diminished expectation of privacy.\textsuperscript{115} This reduction in a hunter’s expectation of privacy is caused by the fact that hunting is a highly regulated activity, and voluntarily engaging in the privileged activity of hunting is regarded as an act of consent regarding the measures that are necessary to preserve and protect a state’s property for the public good.\textsuperscript{116}

Even if granted validity as an exception to the Fourth Amendment, the idea that participation in a particular activity contains an implication of consent to suspicionless searches for the purpose of checking compliance with the specialized regulations unique to that activity should be reserved for intrusions upon commercial entities.\textsuperscript{117} Intrusions upon an individual’s expectation of privacy should be subject to greater restrictions under the Fourth Amendment than the administrative inspection of commercial entities.\textsuperscript{118}

Allowing AGFC officers to stalk a duck hunter for two hours without observing any violations of the law and then to detain him for the purposes of a search is the very type of arbitrary, unfettered discretion of the officer in the field that the Fourth Amendment reasonableness standard was established to prevent.\textsuperscript{119} While the Supreme Court of Arkansas avoided analyzing whether the officers’ seizure of Pickle was valid under the Fourth Amendment, the glaring inference from the court’s decision is that AGFC officers do have the authority to randomly conduct suspicionless inspections of hunters in the field so long as they do not exceed the scope of checking compliance with game laws.\textsuperscript{120} If reasonable suspicion develops during the

\textsuperscript{115} Id. at 754 (quoting People v. Perez, 59 Cal. Rptr. 2d 596, 601 (Cal. Ct. App. 1996)).

\textsuperscript{116} See Elzey, 519 S.E.2d at 754. Other state courts have used similar reasoning in upholding greater intrusions upon the privacy of hunters than would be reasonable in contexts other than hunting. See, e.g., People v. Layton, 552 N.E.2d 1280, 1287 (Ill. App. Ct. 1990) (holding that the highly regulated activity of hunting is a privilege and not a right, and therefore engaging in hunting implies consent to some intrusions); State v. McHugh, 630 So. 2d 1259, 1266 (La. 1994) (holding that satisfactory enforcement of game laws requires that wildlife agents be able to make suspicionless stops of hunters in order to check licenses and make game inquiries, and that hunters know or should know that while hunting they will be open to such checks), abrogated on other grounds by State v. Jackson, 764 So. 2d 64 (La. 2000); State v. Colosimo, 669 N.W.2d 1, 5 (Minn. 2003) (holding that fishing is a highly regulated privilege, and those who utilize this privilege accept the unique conditions imposed by such regulations).

\textsuperscript{117} See Fischer Kuh, supra, note 36, at 37.

\textsuperscript{118} See id. Although it should be noted that such a distinction creates the possibility that an individual hunter in the field and a hired hunting guide in the field could have differing expectations of privacy.


\textsuperscript{120} See Pickle v. State, 2015 Ark. 286, at 6, 466 S.W.3d 410, 413.
regulatory inspection, only then would an AGFC officer have the authority to conduct a criminal history check.\textsuperscript{121}

The effect of the majority’s position in this case has the same effect as if it had adopted the dissent’s position. The only difference is that if the court had followed the dissent’s position the court would have clarified the law instead of creating uncertainty regarding the authority of AGFC officers. However, both approaches allow for random, suspicionless, targeted seizures in violation of the Fourth Amendment.\textsuperscript{122}

b. AGFC procedures can be brought within the requirements of \textit{Prouse} and \textit{Allen} without resorting to a doctrine of implied consent

It is not necessary to suggest that the balancing test, which is used to determine the reasonableness of a government practice under the Fourth Amendment, is so different in the context of AGFC officers checking for compliance with game laws that the requirements set out in \textit{Delaware v. Prouse} and \textit{State v. Allen} must be abandoned.\textsuperscript{123}

In \textit{Prouse}, the Supreme Court of the United States held that it is unreasonable under the Fourth Amendment for police officers to make random, suspicionless automobile stops for the purpose of checking a driver’s license and vehicle registration.\textsuperscript{124} The Court went on to say that under circumstances where regulatory inspections are not premised on any articulable suspicion, the inspections must be undertaken pursuant to a plan of previously specified neutral criteria.\textsuperscript{125} This rule was further developed in \textit{Brown v. Texas} in which the Court said “the Fourth Amendment requires that a seizure [of an individual] must be based on specific, objective facts . . ., or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.”\textsuperscript{126}

The Supreme Court of Arkansas adopted this rule in \textit{Allen}.\textsuperscript{127} \textit{Allen} involved an AGFC officer’s unreasonable seizure of an individual for the purpose of checking compliance with boating safety laws.\textsuperscript{128} The court found that there was no plan in place by which the officer determined which boats

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\textsuperscript{121.} See \textit{id.} at 7, 466 S.W.3d at 414.
\textsuperscript{123.} 440 U.S. 648 (1979); 2013 Ark. 35, 425 S.W.3d 753.
\textsuperscript{124.} \textit{Prouse}, 440 U.S. at 663.
\textsuperscript{125.} \textit{Id.} at 662 (quoting Marshall v. Barlow’s, Inc., 436 U.S. 307, 323 (1978)).
\textsuperscript{126.} 443 U.S. at 51 (citing \textit{Prouse}, 440 U.S. at 663; \textit{Martinez-Fuerte}, 428 U.S. at 558–62).
\textsuperscript{127.} \textit{Allen}, 2013 Ark. 35, at 4–5, 425 S.W.3d at 757.
\textsuperscript{128.} \textit{Id.} at 4–5, 425 S.W.3d at 757.
\end{flushleft}
to pull over for safety checks, and that the officer was not acting upon any suspicion of wrongdoing when he made the stop.\textsuperscript{129} The court held that simply relying on the officer’s arbitrary discretion about what boats to check was an unreasonable basis upon which to perform a seizure, and that without a plan in place to remove discretion from the officer in the field such a seizure violates the Fourth Amendment.\textsuperscript{130} It follows that if an AGFC officer is to lawfully stop and inspect a hunter in the field, the officer must either possess suspicion that the hunter is violating the law, or the officer must be acting pursuant to a previously specified plan of neutral limitations that removes discretionary authority from the officer about whom to check for compliance.\textsuperscript{131}

\textit{i. Checkpoints as a neutral limitation}

One example of a plan embodying neutral limitations is a stationary sobriety checkpoint on a roadway that removes every fifth car from a line of traffic to check the driver’s licensure and see if there are any outstanding warrants for the individual.\textsuperscript{132} In other jurisdictions, checkpoints for enforcing game laws have been upheld as reasonable under the Fourth Amendment.\textsuperscript{133} It has been argued that due to the limited manpower available and the vast expanses that must be patrolled, checkpoints are insufficient for properly protecting a state’s interests in enforcing hunting and fishing laws.\textsuperscript{134} However, this is not an argument against the constitutionality of suspicionless stops at checkpoints. So long as the location of a checkpoint is administratively predetermined prior to its implementation by the officers in the field, suspicionless stops at checkpoints would be well within the rule established in \textit{Prouse} and adopted in \textit{Allen}.\textsuperscript{135}

\textit{ii. Area enforcement as a neutral limitation}

Another possible plan of neutral limitation would be area-specific enforcement that requires AGFC officers to stop and check every hunter they come into contact with during their patrol of certain sections of land or wil-

\begin{itemize}
\item \textsuperscript{129} Id. at 3, 5, 425 S.W.3d at 756, 757.
\item \textsuperscript{130} Id. at 5, 425 S.W.3d at 757.
\item \textsuperscript{131} Id., 425 S.W.3d at 757.
\item \textsuperscript{132} Mullinax v. State, 327 Ark. 41, 49, 938 S.W.2d 801, 806 (1997).
\item \textsuperscript{133} See, e.g., People v. Maikhio, 253 P.3d 247, 263 (2011) (citing U.S. v. Fraire, 575 F.3d 929 (9th Cir. 2009); State v. Albaugh, 571 N.W.2d 345 (N.D. 1997); State v. Sherburne, 571 A.2d 1181 (Me. 1990); Drane v. State, 493 So. 2d 294 (Miss. 1986); State v. Tourtillott, 618 P.2d 423 (Or. 1980); State v. Halverson, 277 N.W.2d 723 (S.D. 1979)).
\item \textsuperscript{134} See, e.g., State v. McHugh, 630 So. 2d 1259, 1267–68 (La. 1994), abrogated on other grounds by State v. Jackson, 764 So. 2d 64 (La. 2000).
\item \textsuperscript{135} See LAFAVE, supra note 53, § 10.8(e).
\end{itemize}
So long as AGFC officers are not left to arbitrarily decide where they will patrol, then a plan embodying specific, neutral limitations can very easily be implemented, and may not be substantially different from the procedures currently in place in the AGFC.

Assuming AGFC officers are currently assigned to patrol certain areas by a higher official in the commission, the only change that would have to be made in operating procedure is the implementation of a requirement that AGFC officers inspect every hunter they encounter during their enforcement tours. Though this may be a relatively localized plan, a statewide written plan is not required for the plan to allow for reasonable stops under the Fourth Amendment.\textsuperscript{137}

It is possible to argue that because there are more hunters than AGFC officers, some hunters who are observed by AGFC officers will inevitably be allowed to go unchecked. While it is true that AGFC officers may not be able to inspect every hunter they observe, it does not follow that the officers will be authorized to use arbitrary and unfettered discretion to stop whichever hunters they choose.\textsuperscript{138} The officers will be bound by higher authority within the AGFC to consecutively stop each hunter they encounter during their tour of enforcement, and if some hunters are thereby exempt from inspection on a particular day this does not defeat the neutralizing limitation of the procedure.

2. Officers Now Have the Authority to Conduct Criminal History Checks as Part of a Rule 3.1 Investigative Stop

When an AGFC officer checks an individual for compliance with game laws, it is a lawful administrative search.\textsuperscript{139} Any detention for purposes beyond checking for compliance with game laws would be investigative and only lawful if supported by a reasonable, articulable suspicion of criminal activity.\textsuperscript{140} Running a check on Pickle’s criminal history is the procedure that the court said exceeded the scope of an administrative search into compliance with game laws.\textsuperscript{141} The court held that, in this case, there was no reasonable suspicion to support the officers’ investigation into Pickle’s criminal history pursuant to Arkansas Rule of Criminal Procedure 3.1.\textsuperscript{142}

\textsuperscript{136} See McHugh, 630 So. 2d at 1266.
\textsuperscript{137} Mullinax, 327 Ark. at 49, 938 S.W.2d at 806.
\textsuperscript{138} See McHugh, 630 So. 2d at 1266.
\textsuperscript{139} See Pickle v. State, 2015 Ark. 286, at 6, 466 S.W.3d 410, 413; ARKANSAS STATE GAME AND FISH COMMISSION CODE BOOK, § 01.00-B (2015).
\textsuperscript{140} See ARK. R. CRIM. P. 3.1; Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
\textsuperscript{141} See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
\textsuperscript{142} Id. at 7, 466 S.W.3d at 414.
This holding makes it seem well-settled that a check into an individual’s criminal history to see if she has any outstanding warrants is permissible under Arkansas Rule of Criminal Procedure 3.1, so long as the criterion of reasonable suspicion is met. Before Pickle, there was uncertainty in the law as to whether a warrants check would constitute a lawful search during an investigative stop. It is now clearly lawful for police officers to detain innocent individuals, so long as there is a reasonable suspicion, and demand information from the detainees in order to conduct a criminal history check. In the context of pedestrians who are subject to Rule 3.1 stops, this conclusion is supported by numerous decisions in state and federal courts.

3. Creating the Pickle Search on These Facts Leads to Confusion and Uncertainty

Assuming that the officers had the authority to stop Pickle and check for regulatory compliance without a reasonable, articulable suspicion of wrongdoing, then it is possible to apply the Rule 3.1 analysis to any detention or search subsequent to the compliance check. And this is what the court did. However, using the facts of this case to create the Pickle search leads to a contradiction.

At the moment it was discovered that Pickle did not have a hunting license on his person, the officers possessed a reasonable, articulable suspicion that Pickle was hunting without having first obtained the proper license to do so, which is a misdemeanor that endangers the state’s property in the form of waterfowl. Suspicion of this misdemeanor falls within the Rule 3.1 criteria.

According to the court’s own reasoning, at the moment the officers discovered that Pickle was hunting without a license on his person, the scope of their search would have expanded beyond the limited administrative Pickle search to include lawful searches pursuant to Rule 3.1. It would then have been lawful for the officers to use Pickle’s identification to conduct a criminal history check as part of a valid Rule 3.1 investigation. In this case, it became lawful to conduct a Rule 3.1 search into Pickle’s criminal history

143. See id. at 6–7, 466 S.W.3d at 413–14.
144. See supra note 52 and accompanying text.
146. See supra note 53.
148. See ARK. R. CRIM. P. 3.1.
149. See Pickle, 2015 Ark. 286, at 6–7, 466 S.W.3d at 413–14.
150. See supra notes 141–43 and accompanying text.
from the moment the officers discovered that he was hunting without a license on his person.\textsuperscript{151}

\textbf{a.} There is now uncertainty regarding the authority of police officers to run criminal history checks during routine traffic stops.

The \textit{Pickle} holding clarified the law regarding a police officer’s authority to use an individual’s identity to run a criminal history check during an investigative stop.\textsuperscript{152} Curiously, at the same time, the holding brings into question the accepted practice of checking a driver’s record for outstanding warrants during a vehicle stop for a traffic violation.\textsuperscript{153}

Prior to \textit{Pickle}, the Supreme Court of Arkansas held on multiple occasions that a driver’s criminal history could be checked during a stop for a traffic violation, but that a criminal investigation beyond the scope of citing an individual for a traffic violation was impermissible absent Rule 3.1 reasonable suspicion.\textsuperscript{154} The court restates this rule in \textit{Pickle} by analogizing the unlawful search into Pickle’s criminal history to the suspicionless detention of a motorist after the legitimate purpose of a traffic stop has been completed.\textsuperscript{155} In drawing this analogy, the court cited to \textit{Lilley v. State}.\textsuperscript{156}

In \textit{Lilley}, an officer pulled over a driver after watching his car “drive off the road three times.”\textsuperscript{157} The officer obtained the driver’s license and vehicle paperwork and asked the driver, Lilley, to follow him to his patrol car.\textsuperscript{158} While Lilley sat in the patrol car, the officer ran a criminal history check, spoke with Lilley, issued a warning to Lilley, and returned his vehicle paperwork.\textsuperscript{159} The court held that “the traffic stop [was] completed after

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  \item \textsuperscript{151} It should be noted that hunting without a license on your person is itself a misdemeanor. \textit{Ark. Code Ann.}, § 5-1-107(a)(3) (Repl. 2013); \textit{Arkansas State Game and Fish Commission Code Book}, § 03.01 (2015). Because Pickle was guilty of a misdemeanor just by hunting without possessing a hunting license on his person, it was extremely odd for the court to hold that “the facts presented in this case did not give rise to reasonable suspicion allowing officers to conduct a criminal investigation.” \textit{Pickle}, 2015 Ark. 286, at 7, 466 S.W.3d at 414.
  \item \textsuperscript{152} \textit{See supra} notes 141–43 and accompanying text.
  \item \textsuperscript{153} \textit{See Pickle}, 2015 Ark. 286, at 6–7, 466 S.W.3d at 413–14.
  \item \textsuperscript{155} \textit{Pickle}, 2015 Ark. 286, at 6–7, 466 S.W.3d at 413–14 (citing \textit{Lilley v. State}, 362 Ark. 436, 208 S.W.3d 785 (2005)).
  \item \textsuperscript{156} 362 Ark. 436, 208 S.W.3d 785 (2005).
  \item \textsuperscript{157} \textit{Id.} at 437, 208 S.W.3d at 786.
  \item \textsuperscript{158} \textit{Id.}, 208 S.W.3d at 786.
  \item \textsuperscript{159} \textit{Id.} at 437–38, 208 S.W.3d at 786–87.
\end{itemize}
the warning and vehicle documentation were handed to Lilley. At that point, when the traffic stop was completed, the Rule 3.1 reasonable suspicion criteria applied to any further detention of Lilley by the officer.

There are many similarities between Pickle and Lilley. While the court did not decide whether the search that revealed Pickle’s identity was lawful, for the purposes of the court’s reasoning Pickle and Lilley both involved lawful stops by a law enforcement officer. Both stops were considered seizures under the Fourth Amendment. Also, both stops were premised on the purpose of ensuring compliance with standards that are in place to preserve safe and responsible use of a highly regulated activity. Both stops were of a nature that disallowed detention of an individual for purposes that exceeded the scope of the initial stop, unless during the stop a reasonable suspicion that would support Rule 3.1 developed. However, the similarity ends here. In Lilley, it was after the completion of a criminal history check that the Rule 3.1 criteria applied to the detention, but in Pickle the Rule 3.1 criteria applied to the detention prior to the criminal history check.

There is clear precedent from the Supreme Court of the United States that in the context of traffic stops, warrant checks are not a violation of the Fourth Amendment. Furthermore, the Supreme Court of Arkansas has said that a criminal history check during a valid traffic stop is “not only routine but prudent.”

Analogizing Pickle to a traffic stop is confusing because running a warrant check during a traffic stop is a firmly established official procedure that

160. Id. at 439, 208 S.W.3d at 788.
161. Id., 208 S.W.3d at 788.
162. See Pickle v. State, 2015 Ark. 286, at 6, 466 S.W.3d 410, 413; Lilley, 362 Ark. at 439, 208 S.W.3d at 788.
163. See Thompson v. State, 303 Ark. 407, 409, 797 S.W.2d 450, 451–52 (1990) (citing United States v. Hernandez, 854 F.2d 295 (8th Cir. 1988)); Domínguez v. State, 290 Ark. 428, 432, 720 S.W.2d 703, 705 (1986) (citing Delaware v. Prouse, 440 U.S. 648 (1979)). It should be noted that an issue arises as to whether Pickle reasonably believed that he was free to leave after the officers stepped away from the hunting party to a point from which they could not be observed. If he did, then the detention was over and it is arguable that the search into Pickle’s licensure and criminal history was not conducted during a Fourth Amendment seizure. See supra note 22 and accompanying text. If this were the case, then a question arises of whether law enforcement can check an individual’s criminal history, without detaining the individual, and then subsequently make an arrest of the individual.
165. See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413; Lilley, 362 Ark. at 439, 208 S.W.3d at 788.
166. See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413; Lilley, 362 Ark. at 437, 439, 208 S.W.3d at 786, 788.
167. See Rodriguez, 135 S. Ct. at 1615.
has been held not to intrude upon an individual’s Fourth Amendment rights.\textsuperscript{169} But in \textit{Pickle}, it is the running of a warrant check that was held to be a search that extends beyond the scope of any lawful administrative search that was performed in accord with the Fourth Amendment.\textsuperscript{170}

The court’s holding in \textit{Pickle} provides defense attorneys with a good argument that a check for outstanding warrants goes beyond the scope of a routine traffic stop because the stop should involve no more than an officer’s determination that a driver’s license and registration are valid and the issuance of a citation. After these procedures, the legitimate purpose of a traffic stop would have ended.\textsuperscript{171} This argument is given greater weight because this is the very scenario that the court used to illustrate its reasoning when it drew an analogy between \textit{Pickle} and \textit{Lilley}.\textsuperscript{172}

b. \textit{Pickle} will be cited in many motions to suppress evidence

Rule 3.1 says that a law enforcement officer who possesses reasonable suspicion may lawfully stop and detain any person he suspects “if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.”\textsuperscript{173} It should be noted that Rule 3.1 is vague enough that any person who is searched due to an outstanding warrant during an investigative stop, and subsequently arrested and charged for crimes stemming from that search, has a plausible argument that it is not within the scope of verifying one’s identity or determining the lawfulness of one’s conduct to run a criminal history check to search for outstanding warrants.\textsuperscript{174}

This argument is now bolstered by the \textit{Pickle} holding.\textsuperscript{175} It is very probable that \textit{Pickle} will be cited in numerous motions to suppress. Defense attorneys will attempt to argue that even if the detention of a charged individual was premised on reasonable suspicion, the \textit{Pickle} precedent prevents that detention from extending to a criminal history check for outstanding warrants. Extending the scope of a Rule 3.1 investigation to include a criminal history check may go “far beyond the scope” of any search conducted

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\textsuperscript{169} See \textit{Rodriguez}, 135 S. Ct. at 1615; \textit{Laime}, 347 Ark. at 157, 60 S.W.3d at 474.
\textsuperscript{170} \textit{Pickle}, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
\textsuperscript{172} See \textit{Pickle}, 2015 Ark. 286, at 6–7, 466 S.W.3d at 413–14; \textit{Lilley}, 362 Ark. 436, 208 S.W.3d 785.
\textsuperscript{173} ARK. R. CRIM. P. 3.1.
\textsuperscript{174} See \textit{id}.
\textsuperscript{175} \textit{See Pickle}, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
\end{flushleft}
for the purpose of verifying an individual’s identity and determining that her conduct is lawful.  

  c. A peculiar expectation of privacy

The Pickle search creates an expectation of privacy in an individual’s criminal history that cannot be intruded on by law enforcement officers during a lawful detention for the purposes of an administrative search. This newfound expectation of privacy in one’s criminal record is a novelty in Fourth Amendment jurisprudence. And while “there is no constitutional objection to a rule of law that provides more protection to individual liberty than the minimum required by the Constitution of the United States,” it appears odd to say that an individual has a reasonable expectation of privacy in the public record. Nonetheless, the Supreme Court of Arkansas has created a new type of administrative search that provides this peculiar protection to individual liberty.

C. The Purpose for Creating the Pickle Search

Detaining, searching, and arresting a hunter after stalking him for two hours without observing any indication of unlawful conduct is a violation of the Fourth Amendment’s reasonableness requirement for searches and seizures. The Supreme Court of Arkansas must have thought so or it would not have been so eager to suppress the evidence against Pickle.

It is likely that the Supreme Court of Arkansas created the Pickle search in an attempt to preserve the authority of AGFC officers to arbitrarily target sportsmen for the purpose of checking regulatory compliance, without having to say that in this instance the Fourth Amendment was violated. However, when the court assumed without deciding that the officers’ search of Pickle was appropriate, it needlessly sidestepped an issue that is likely to reach the court again. There is great uncertainty now as to whether AGFC

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176. See Ark. R. Crim. P. 3.1; Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
177. See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
179. See State v. Sloane, 939 A.2d 796, 803 (N.J. 2008) (citing Willan v. Columbia Cnty., 280 F.3d 1160, 1162 (7th Cir. 2002) (finding that “[r]ecords of conviction are public rather than private documents” and, therefore, may be recorded and disseminated by NCIC); People v. Davis, 649 N.W.2d 94, 100 (Mich. Ct. App. 2002) (finding that a computerized check for information regarding outstanding arrest warrants is a matter of public record); Gist v. Macon Cnty. Sheriff’s Dep’t, 671 N.E.2d 1154, 1161 (Ill. App. Ct. 1996) (noting that the existence of an arrest warrant is a matter of public record)).
180. See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
181. See supra note 119 and accompanying text.
182. See Pickle, 2015 Ark. 286, at 6, 466 S.W.3d at 413.
officers may randomly check hunters for compliance with game laws, and if not, what measures must be in place to satisfy the requirement that checks be made pursuant to a plan of neutral limitations on officer discretion.  

V. CONCLUSION

Within the framework of Fourth Amendment jurisprudence governing warrantless searches that do not require a degree of individualized suspicion, an AGFC officer’s authority to protect our natural resources can be preserved without resorting to the creation of Fourth Amendment novelties. Any plan that removes arbitrary discretion from the officer in the field will satisfy the required “neutral criteria” that must be in place under Prouse and Allen. It is likely, in the case of Pickle, that such a plan was already in place. If the officers who arrested Pickle were ordered by the AGFC to patrol a certain area and to check consecutively all hunters therein, so long as the officers did not possess discretion to transgress those orders, this would qualify as a plan embodying neutral criteria.

The Supreme Court of Arkansas said that the record was not developed by which it could determine whether the officers’ detention and search of Pickle violated the Fourth Amendment. However, a better result would have been reached if the court would have ruled that the officers’ conduct in this case violated the Fourth Amendment. Then Pickle’s motion to suppress would still have been granted, and the court would not have had to resort to creating a new rule of law to reach this result.

In issuing its opinion, the court could then have outlined the measures of neutral criteria that should be followed to prevent a Fourth Amendment violation in a similar scenario in the future. By doing so, the court could have affirmed and clarified the law without changing the scope of authority that is possessed by AGFC officers and bringing into doubt the authority of other law enforcement to conduct criminal history checks in other contexts.

Ben Honaker*

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183. See supra notes 123–31 and accompanying text.

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