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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court did erred in finding that the community corrections officer's search of Parris's residence and property was lawful when: (1) Washington law allows a CCO to search an offender's residence and personal property when the CCO has reasonable cause to believe that the offender has violated the conditions of his or her community custody; and, (2) the record below clearly established that CCO Nelson had reasonable cause to believe that Parris had violated the conditions of his community custody?

2. Whether the trial court's unsupported finding of fact that Parris had failed to report for a DOC meeting was harmless when: (1) Parris conceded below that Officer Nelson had reasonable cause to believe that a parole or probation violation has occurred; and, (2) the trial court properly found that Officer Nelson had reasonable cause to believe that Parris had violated the terms of his community custody based on the uncontested evidence that Parris had committed a new law violation, used drugs, and violated his curfew?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Derek Parris was charged by information filed in Kitsap County Superior Court with one count of possession of depictions of a minor engaged in sexually explicit conduct. CP 1. Prior to trial, Parris filed a suppression

motion, which the trial court denied after a hearing. CP 11, 52. The case was then submitted to the trial court on stipulated facts. CP 33. The trial court found Parris guilty and imposed a standard range sentence. CP 33-36, 37. This appeal followed.

B. FACTS

Prior to trial, Parris filed a motion to suppress arguing that his community corrections officer had unlawfully seized evidence from his residence. CP 11. The State filed a responsive brief arguing that the search was lawful because the community corrections officer had a reasonable suspicion that Parris had violated the terms of his community custody, and thus the community corrections officer was justified in entering Parris's residence and seizing the evidence at issue. CP 18-32.

On November 16, 2009, the trial court held a hearing on the suppression motion. RP (11/16) 1-44. At the hearing, Parris's community corrections officer, Nancy Nelson, testified and explained the circumstances relating to the search of Parris's home as outlined below.

Officer Nancy Nelson is a community corrections officer (CCO) with the Department of Corrections. RP (11/16) 4. Officer Nelson has been a community corrections officer since 1990, and for the last twelve years she has primarily worked with sex offenders. RP (11/16) 4-5. Officer Nelson was the CCO in charge of the supervision of Parris who was on community

custody based on a conviction for failure to register as a sex offender. RP (11/16) 6-7.

Officer Nelson explained that Parris had a number of community custody conditions including that he was prohibiting from: having contact with minors; possessing alcohol or illegal drugs or drug paraphernalia, and from possessing sexually explicit materials. RP (11/16) 6. An additional condition of Parris's community custody was that he was to abide by a curfew that was set from 10 p.m. to 5 a.m. RP (11/16) 6-8. Parris was also required to participate in drug and alcohol treatment. RP (11/16) 6-8.

Officer Nelson explained that in early July, Parris was in noncompliance based on his failure to participate in drug and alcohol treatment and for using methamphetamine. RP (11/16) 7. Parris's use of methamphetamine was discovered when Parris took a urinalysis test in June that came back positive for methamphetamine. RP (11/16) 7.

On July 6, Officer Nelson was also informed that Parris had been arrested around 10:40 p.m. on July 2 for driving with a suspended license, and that had been in the presence of an under-aged girl, D.L.S., on this occasion. RP (11/16) 8-9. Officer Nelson contacted the Bremerton Police Department and obtained a copy of the police report relating to the July 2 arrest. RP (11/16) 9. Officer Nelson also testified that she had found D.L.S.

at Parris's residence on a previous occasion and had warned Parris that he was not to have contact with minors. RP (11/16) 13-14.

Also on July 6, Officer Nelson received a phone call from Parris's mother who expressed concern regarding Parris's behavior. RP (11/16) 9. Parris's mother stated that she believed Parris was using drugs and was out of control, and she stated that Parris had threatened to get a gun if Department of Corrections staff ever came to arrest him. RP (11/16) 9-10.¹ Parris's mother also explained that Parris (who lived on the same piece of property with her) had changed the locks on his room and thus she could no longer get access to his room. RP (11/16) 10-12.

Officer Nelson then discussed the matter with her supervisor and decided to arrest Parris and search his residence based on the fact that Parris had used methamphetamine, had contact with a minor, violated his curfew, and potentially had acquired a firearm. RP (11/16) 11. Officer Nelson then went to Parris's residence with two other CCO's and two officers from the Kitsap County Sheriff's Office. RP (11/16) 11. At that time Parris was residing in a small room off to the side of a garage near a mobile home where Parris's mother lived. RP (11/16) 11-12.

¹ Officer Nelson explained that she had spoken to Parris's mother periodically in the past regarding Parris's supervision and concerns that she may have had. RP (11/16) 10-11. Officer Nelson also knew that Parris lived on the same piece of property as his mother. RP (11/16) 10.

Officer Nelson knocked on the door for 10 to 15 minutes and asked Parris to open the door and come out, but she got no response and the door was locked. RP (11/16) 12. Officer Nelson then went around to a side of the building where there were several windows, and eventually several of the officers were able to see Parris and D.L.S. attempting to hide in the room. RP (11/16) 12-13. Parris was then ordered to come out, and approximately two minutes later Parris and D.L.S. came out of the room. RP (11/16) 13.

Officer Nelson then searched Parris's room. RP (11/16) 14. She found numerous items including a "primarily empty" bottle of vodka, numerous kinds of adult pornography, including DVDs, magazines, and a video, and several syringes. RP (11/16) 15. Officer Nelson was aware that Parris had a history of injecting illegal drugs and thus believed that the syringes were used to inject illegal narcotics. RP (11/16) 15. Officer Nelson also found many items of clothing that appeared to belong to Parris and D.L.S. littered around the room, suggesting that both Parris and D.L.S. were living there. RP (11/16) 14-15.

Two "memory sticks" were also found in the room, and one of the memory sticks had D.L.S.'s first name written on it. RP (11/16) 16. Officer Nelson explained that in her experience as a CCO working with sex offenders, most of the pornography she has found over the last 8 or 9 years has been found on some sort of electronic storage device (either a computer, a

memory stick, or a camera). RP (11/16) 28-29. Thus, since she had found pornography in Parris's room, Officer Nelson suspected that could have been additional pornography on the memory sticks, and that that there could have also been other evidence of probation violations on the memory sticks. RP (11/16) 23-25, 28-29.

Officer Nelson seized the memory sticks, and was able to view the contents of the memory sticks the next day. RP (11/16) 16. The memory sticks contained numerous images of D.L.S. and Parris, as well as two pictures of two handguns in a case. RP (11/16) 17. One of the memory sticks also contained a 17-minute video clip of Parris and D.L.S. engaged in sexual acts. RP (11/16) 17. A second video clip, lasting approximately two minutes, was also found. RP (11/16) 20.

At the conclusion of Officer Nelson's testimony, the trial court heard argument regarding the suppression motion. RP (11/16) 29. Defense counsel conceded that Officer Nelson had enough evidence to justify her entry and search of Parris's room and property. RP (11/16) 31. Defense counsel, however, argued that the search could only go "as far as the eyes can see." RP (11/16) 31. Thus, defense counsel argued that Officer Nelson could not search the contents of the memory sticks without an additional, independent, and articulable reason for doing so. RP (11/16) 32.

The trial court then asked defense counsel a clarifying question and the following exchange took place:

The Court: I have a question for you. I want to make sure I understand this.

You are suggesting that an electronic storage device is tantamount to a locked container; and, consequently, when a CCO goes into a residence of someone under supervision, that there must be more than evidence of a general probation violation to search that memory card?

Mr. Houser: Yes.

The Court: Is there any case authority that forms that analysis?

Mr. House: Not that I have found so far, Your Honor.

RP (11/16) 32.

The State argued that the law only required that a CCO must have a reasonable suspicion that a probation violation has occurred before searching a probationer's residence or property. RP (11/16) 37. Thus, the search in the present case was lawful. RP (11/16) 37. The State pointed out that there was no authority supporting the defense claim that a CCO's lawful search of a probationer's residence could not include a search of locked containers or memory sticks found inside the residence. RP (11/16) 36-37. Rather, the State noted that such a rule would run counter to the whole idea that a CCO may search the probationer's home, and that probationers "would simply lock

up their illicit stuff in a lockbox and the offender would never have to face DOC sanctions.” RP (11/16) 36-37.

The trial court denied the defense motion, noting that the court could find no authority for the position that Officer Nelson was required to make any additional showing in order to search the memory sticks. RP (11/16) 41. In addition, the court also noted that even if Officer Nelson had been required to “have some heightened burden in examining the memory cards,” then the testimony at the hearing would have been sufficient to justify the search. RP (11/16) 40-41. For instance, the evidence showed that: Officer Nelson’s training and experience had shown that pornography was often stored on electronic storage devices; Parris possessed other forms of pornography in his room; one of the memory cards had D.L.S.’s name on it; and, the condition of the room suggested that Parris and D.L.S. were living together. RP (11/16) 41. Given these facts, even if there had been some requirement that Officer Nelson make some additional showing before seizing and searching the memory sticks, Officer Nelson would have been able to meet that heightened burden. RP (11/16) 41.

The trial court subsequently entered written findings of fact and conclusion of law as follows:

FINDINGS OF FACT

I.

That The defendant, Derek Parris is currently on probation for a conviction for Failure to Register as a sex offender under Kitsap County cause number 06-1-01552-3. Pursuant to that Judgment and Sentence the court prohibited the defendant from possession of alcohol, and illegal drugs. In addition the defendant is prohibited from possession of sexually explicit materials, from engaging in criminal behavior, and from having contact with children under the age of 18. Per the terms of the Judgment and Sentence, Parris was also required by DOC to maintain a curfew that required him to be in his home from 10pm to 5am.

II.

That on July 2, 2009, the defendant was arrested for driving without a license. The arrest occurred at 10:40pm. On July 6, 2009, Parris failed to report to DOC for a regularly scheduled meeting. His mother contacted Nancy Nelson, the defendant's DOC officer, on July 6, 2009. She was concerned because Parris had threatened to use a firearm to prevent DOC from arresting him. In addition, Parris has recently submitted a positive urine sample for methamphetamine.

III.

That on July 7, 2009, CCO Nelson received permission from her supervisor to arrest the defendant and search his home based on his recent violations of probation. When CCO Nelson arrived, the defendant initially refused to come out of his bedroom. Eventually, the defendant was persuaded to come out and it was discovered that the defendant was hiding in his room with a 17 year old female, DLS. At that point the defendant and DLS denied anything more than a casual friendship.

IV.

That during the initial search of the defendant's bedroom, CCO Nelson saw clothing items within the residence that appeared to belong to DLS. From the items within the bedroom, it appeared DLS was living with the

defendant. CCO Nelson discovered alcohol containers, hypodermic syringes, 4 triple X rated DVD's and 2 pornographic magazines. CCO Nelson also found several memory sticks and a computer thumb drive. One of the memory sticks was labeled with the first name of DLS.

V.

That CCO Nelson later viewed the information contained on the memory sticks and located a movie that the defendant had created of him and DLS engaging in sexual acts. Detective Smith later sought a warrant to search the memory sticks and thumb drives based on the information provided to him by CCO Nelson. Detective Smith observed the same photographs and movies as CCO Nelson.

VI.

That CCO Nelson has worked for the department of corrections as a probation officer for 12 years. During this time, she has been responsible for monitoring felony level sex offenders. During this time period, CCO Nelson has arrested approximately 400 offenders in a variety of locations. A majority of these arrests included searches of the offender's person, home, cars, and/or worksites. Based on CCO Nelson's training and experience, she knows that most pornography is contained on electronic devices, that defendants often create their own pornographic materials, and that defendants store homemade pornography materials as well as pornography downloaded from the internet on memory sticks/other electronic storage devices.

CONCLUSIONS OF LAW

I.

That the above-entitled Court has jurisdiction over the parties and the subject matter of this action.

II.

That A DOC officer may search a defendant's home without a warrant so long as the search is reasonable and is based upon a well founded suspicion that a violation of probation has occurred. *State v. Winterstein*, 140 Wn. App.

676, 691, 166 P.3d 1242 (2007). “A ‘well founded suspicion’ is analogous to the cause requirement of a Terry stop.” *Id.* When these requirements are met, DOC is permitted to search the defendant’s living areas and other common areas the defendant uses. *State v. McKague*, 143 Wn. App. 531, 178 P.3d 1035 (2008). In this case, CCO Nelson had a reasonable suspicion that the defendant was in violation of several probation requirements. The defendant had a new law violation, the defendant had used drugs, and violated curfew. CCO Nelson was justified in searching the defendant’s bedroom and thus, searching the electronic storage devices within the bedroom.

III.

That there is not a heightened requirement for DOC officers to meet before a DOC officer searches an offender’s electronic storage devices. Electronic storage devices are not analogous to locked containers and even if they were, there is no requirement, under the law, that prohibits DOC officers from searching locked containers. However, if there were a heightened standard, it would have been met in this case. In this case, CCO Nelson had observed pornographic materials throughout the defendant’s room; CCO Nelson knew that defendants would typically store pornographic materials on electronic storage devices; DLS, a minor, appeared to be living with the defendant; and DLS’s name appeared on one of the electronic storage devices.

CP 52-55.

III. ARGUMENT

- A. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE COMMUNITY CORRECTIONS OFFICER'S SEARCH OF PARRIS'S RESIDENCE AND PROPERTY WAS LAWFUL BECAUSE: (1) WASHINGTON LAW ALLOWS A CCO TO SEARCH AN OFFENDER'S RESIDENCE AND PERSONAL PROPERTY WHEN THE CCO HAS REASONABLE CAUSE TO BELIEVE THAT THE OFFENDER HAS VIOLATED THE CONDITIONS OF HIS OR HER COMMUNITY CUSTODY; AND, (2) THE RECORD BELOW CLEARLY ESTABLISHED THAT CCO NELSON HAD REASONABLE CAUSE TO BELIEVE THAT PARRIS HAD VIOLATED THE CONDITIONS OF HIS COMMUNITY CUSTODY.**

Parris argues that the trial court erred in concluding that Officer Nelson lawfully seized and searched the memory sticks found in his room. App.'s Br. at 11. This claim is without merit because the trial court correctly found that Officer Nelson had a reasonable cause to believe that Parris had violated the conditions of his community custody (as Parris conceded) and that Officer Nelson was therefore justified in searching Parris residence and personal property.

An appellate court reviews a trial court's findings of fact for substantial evidence. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009); *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Conclusions of law relating to the suppression of evidence are reviewed de

novo. *Winterstein*, 167 Wn.2d at 628; *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

Absent an exception to the warrant requirement, a court presumes that a warrantless search is unconstitutional under the Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington Constitution. *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005). But probationers and parolees have a diminished right to privacy under the Fourth Amendment of the United States Constitution and article 1, section 7 of the Washington Constitution. *State v. Lucas*, 56 Wn. App. 236, 239-40, 783 P.2d 121 (1989), *review denied*, 114 Wn.2d 1009, 790 P.2d 167 (1990); *State v. Lampman*, 45 Wn. App. 228, 233, 724 P.2d 1092 (1986). And a warrant exception exists for a CCO to search a probationer's person, residence, or "other personal property" if the officer has "reasonable cause to believe that an offender has violated a condition or requirement of the sentence." RCW 9.94A.631; *State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984) ("Washington recognizes a warrantless search exception, when reasonable, to search a parolee or probationer and his home or effects."), *cert. denied*, 471 U.S. 1094, 105 S. Ct. 2169, 85 L. Ed. 2d 526 (1985). DOC officers may conduct searches under RCW 9.94A.631 upon less than probable cause, so long as the officer has some "reasonable cause" to believe that a parole violation has occurred. RCW 9.94A.631; *State v. Simms*, 10 Wn.

App. 75, 87, 516 P.2d 1088 (1973), *review denied*, 83 Wn.2d 1007 (1974).²

Moreover, a probationer has a reduced right to privacy and allowing a CCO to monitor a probationer's residence to insure compliance with legitimate conditions of probation is not an unconstitutional restraint. *See Winterstein*, 167 Wn.2d at 628-29; *see also Hocker v. Woody*, 95 Wn.2d 822, 826, 631 P.2d 372 (1981) (a parolee has diminished Fourth Amendment rights in his home and effects); *State v. Lucas*, 56 Wn. App. 236, 239-40, 783 P.2d 121 (1989), *review denied*, 114 Wn.2d 1009 (1990) (“Under the Fourth Amendment and article 1, section 7 of our constitution, probationers and parolees have a diminished right of privacy permitting a warrantless search if reasonable.”); *State v. Lampman*, 45 Wn. App. 228, 233 n. 3, 724 P.2d 1092 (1986) (Washington probationer has diminished right of privacy and can expect the State to “scrutinize him closely and search his person, home and effects on less than probable cause”).

Here, the trial court properly determined that DOC Officer Nelson had a well-founded suspicion that Parris had violated a condition of his sentence and that Officer Nelson was authorized to search his residence; in fact, Parris conceded this point below. *See*, RP (11/16) 31.

² The Washington Supreme Court has held that a CCO must have probable cause to believe that the probationer resides at a particular residence before searching that residence. *State v. Winterstein*, 167 Wn.2d 620, 220 P.3d 1226 (2009). Parris, however, does not contend that Officer Nelson lacked probable cause to believe he resided at the motel room that she

As it was uncontested that Officer Nelson had a well-founded suspicion that Parris had violated the terms of his supervision, the plain language of RCW 9.94A.631 provides that Officer Nelson could lawfully require Parris to submit to a “search and seizure of the offender's person, residence, automobile, or other personal property.” The trial court, therefore, properly concluded that Officer Nelson lawfully searched Parris’s residence and his personal property (the memory sticks) found therein.

Parris’s argument below and on appeal appears to be a claim that even when a CCO has a reasonable basis to believe that an offender has violated his or her community custody conditions (and thus may enter and search the offender’s residence), the CCO may not search a particular item or a locked container found inside the residence without an additional, independent, basis to conclude that the item itself is evidence of a probation violation. Parris, however, has cited no authority to support this claim and the State is aware of no case that stands for such a proposition. Parris further claims that although “as a probationer he had a lesser expectation of privacy, he still has privacy rights.” App.’s Br. at 19. While it is true that probationer’s privacy rights are diminished but not completely eliminated, Washington courts (as outlined above) have consistently held that any remaining privacy rights are protected by the requirement that a CCO may only search the probationer’s residence if

searched.

the CCO has reasonable cause to believe that a parole or probation violation has occurred. In short, an offender's reduced privacy rights are protected by this "reasonable cause" requirement. There is simply no authority requiring any additional showing before a CCO is allowed to search an offender's residence or personal property. Rather, once a CCO has established reasonable cause, the plain language of RCW 9.94A.631 and the wealth of Washington³ case law makes it clear that the CCO may lawfully search the offender's residence and personal property.

³ The Ninth Circuit has also examined Washington law on this issue and found that RCW 9.94A.631 is reasonable and that Washington law does not require that the search of a particular item be necessary to confirm the suspicion of impermissible activity. *United States v. Conway*, 122 F.3d 841, 843 (9th Cir.1997). In *Conway*, a CCO had a well-founded suspicion that an offender had violated a condition of his release by failing to disclose his current address, and subsequently searched the offender's residence and a shoebox (containing a firearm) that was inside the residence. The offender argued that a search of his residence and the shoebox found in the residence was unlawful. The Ninth Circuit, however, disagreed and held that:

Because [the CCO] had reasonable grounds to suspect that Conway had violated the terms of his release, the search was valid under Washington law. It does not matter whether the community corrections officers believed they would find evidence of Conway's address or contraband when they opened the shoeboxes. Washington law does not require that the search be necessary to confirm the suspicion of impermissible activity, or that it cease once the suspicion has been confirmed

Conway, 122 F.3d at 843.

B. ALTHOUGH THE STATE CONCEDES THAT THE TRIAL COURT'S FINDING OF FACT THAT PARRIS HAD FAILED TO REPORT FOR A DOC MEETING, THIS ERROR WAS CLEARLY HARMLESS BECAUSE: (1) PARRIS CONCEDED BELOW THAT OFFICER NELSON HAD REASONABLE CAUSE TO BELIEVE THAT A PAROLE OR PROBATION VIOLATION HAS OCCURRED; AND, (2) THE TRIAL COURT PROPERLY FOUND THAT OFFICER NELSON HAD REASONABLE CAUSE TO BELIEVE THAT PARRIS HAD VIOLATED THE TERMS OF HIS COMMUNITY CUSTODY BASED ON THE UNCONTESTED EVIDENCE THAT PARRIS HAD COMMITTED A NEW LAW VIOLATION, USED DRUGS, AND VIOLATED HIS CURFEW.

Parris next claims that several of the trial court's findings of fact were not supported by the record. The State concedes that one of the trial court's findings was not supported by the record, but the other findings were supported by substantial evidence in the record. In addition, any error in this regard was irrelevant since Parris conceded that Officer Nelson had reasonable cause to believe that a parole or probation violation has occurred, and thus the trial court's findings with respect to only one of multiple specific violations was essentially cumulative, and therefore caused no prejudice nor did it materially affecting the trial court's conclusions of law.

As outlined above, an appellate court reviews a trial court's findings of fact for substantial evidence. *Winterstein*, 167 Wn.2d at 628; *Hill*, 123

Wn.2d at 647. An erroneous finding of fact not materially affecting the conclusions of law is not prejudicial and does not warrant a reversal. *See State v. Caldera*, 66 Wn. App. 548, 551, 832 P.2d 139 (1992)

Parris argues that the trial court erroneously found that he had failed to report to DOC for a regularly scheduled meeting on July 6. App.'s Br. at 7-8. The State concedes that Officer Nelson did not testify about any missed meeting at the suppression hearing below. The trial court's finding on this issue, however, was essentially irrelevant because Parris conceded that Officer Nelson had reasonable cause to believe that a parole or probation violation has occurred. RP (11/16) 31. In addition, the trial court properly found that Officer Nelson's reasonable belief was based on numerous independent and uncontested facts, including that Parris: had been arrested for driving without a license; had violated his curfew; and had tested positive for methamphetamine. CP 53.⁴ In addition, the trial court's ultimate conclusion of law did not include any reference to the missed DOC meeting. Rather, the trial court simply found that,

In this case, CCO Nelson had a reasonable suspicion that the defendant was in violation of several probation requirements. The defendant had a new law violation, the defendant had used drugs, and violated curfew.

⁴ Although not included in the trial court's written findings, the record also shows that when Parris was arrested he was accompanied by a minor, and this uncontested fact formed an additional basis for Officer Nelson's reasonable belief that Parris had violated the terms of his community custody. RP (11/16) 8-9.

CP 54. The trial court's brief mention of the missed DOC meeting, therefore, was irrelevant and did not materially affecting the trial court's conclusions of law.

Parris also argues that the trial court's finding that Officer Nelson discovered alcohol containers, hypodermic syringes, and "4 triple X rated DVDs and 2 pornographic magazines" was not supported by the record. App.'s Br. at 9. Officer Nelson, however, testified at the hearing that she had found a "primarily empty" bottle of vodka, "several hypodermic syringes, a number of different kinds of adult pornography, DVDs, magazines, a video." RP (11/16) 15. While it is true that Officer Nelson did not specifically testify that she found "two" alcohol bottles or "four" DVDs, the record clearly shows that Officer Nelson found at least one alcohol container and a number of pornographic DVDs, magazines, and a video.

Furthermore, as stated above, an erroneous finding of fact not materially affecting the conclusions of law is not prejudicial and does not warrant a reversal. *See e.g., Caldera*, 66 Wn. App. at 551 (holding that trial court's erroneous finding that "ten" ounces of cocaine were delivered when the record showed that only about "nine" ounces were delivered, was not prejudicial), *citing In re Bailey's Estate*, 178 Wash. 173, 176, 34 P.2d 448 (1934). Thus any error the trial court may have made in the present case

regarding the exact number of items was of no discernable importance and any error in this regard was, again, essentially irrelevant and caused no prejudice.

Parris also contends that the trial court's finding that Parris had violated his curfew was not supported by the record. App.'s Br. at 7. It appears that Parris's claim is that the trial court erred because it failed to mention whether or not Parris might have had permission to be out past his 10 p.m. curfew. App.'s Br. at 7. This claim, however, is without merit because Officer Nelson testified that one of the conditions of Parris's community custody was that he was to abide by a 10 p.m. curfew and that Parris had been arrested at 10:40 p.m. on July 2 and that "this was after his 10 p.m. curfew began." RP (11/16) 6-9. From this testimony the trial court could reasonably conclude that Parris had not obtained permission from his CCO to be out past his curfew since his CCO specifically stated that he had been out "after his 10 p.m. curfew began." Furthermore, Parris never contested the fact that he had violated his curfew, not has he ever alleged that he had permission to be out past 10 p.m. The trial court's finding, therefore, was supported by sufficient evidence.⁵

⁵ Parris also contends that the trial court erred in finding that a KCSO detective saw the same images and movies on the memory sticks after a search warrant had been obtained to search the memory sticks. App.'s Br. at 10. Even if it is true that the trial court erred in including this fact in the findings of fact, Parris has failed to show what possible relevance this alleged error had, since the issue before the court was whether Officer Nelson unlawfully searched

In conclusion, although the State concedes that the trial court's finding of fact that Parris had failed to report for a DOC meeting, this error was clearly harmless because it did not materially affect the trial court's conclusions of law and because Parris conceded below that Officer Nelson had reasonable cause to believe that a parole or probation violation has occurred. In addition, the trial court properly found that Officer Nelson had reasonable cause to believe that Parris had violated the terms of his community custody based on the uncontested evidence that Parris had committed a new law violation, used drugs, and violated his curfew.

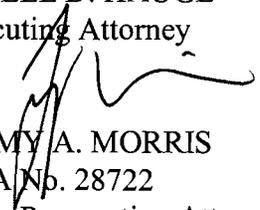
IV. CONCLUSION

For the foregoing reasons, Parris's conviction and sentence should be affirmed.

DATED October 14, 2010.

Respectfully submitted,

RUSSELL D. HAUGE
Prosecuting Attorney



JEREMY A. MORRIS
WSBA No. 28722
Deputy Prosecuting Attorney

and seized the memory sticks. Even though Parris argued that Officer Nelson's observations, if unlawful, should also have been stricken from the later warrant application, Parris has advanced no argument as to how he was prejudiced by the trial court's finding that the KCSO detective saw the same movies *after* the warrant had been obtained. In short, any error in this regard was, again, irrelevant and harmless.