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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

A137656

(Contra Costa County
Super. Ct. No. J1101524)

In jurisdictional and disposition orders under Welfare and Institutions Code section 602, the juvenile court found that T.H. had perpetrated felony theft of a vehicle (Veh. Code, § 10851, subd. (a)) and committed him to a rehabilitation facility. T.H. contends: (1) the court erred in admitting two California Law Enforcement Telecommunications System (CLETS) printouts into evidence; (2) the evidence was insufficient to prove he committed vehicle theft; (3) his statements to the police should have been excluded under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*); (4) the matter should be remanded for specification of the maximum term of confinement; and (5) he should be awarded precommitment credits.

We will remand for the juvenile court to specify a maximum term of confinement and award precommitment credits. In all other respects, the orders will be affirmed.

I. FACTS AND PROCEDURAL HISTORY

A supplemental petition filed pursuant to Welfare and Institutions Code section 602, subdivision (a) alleged that T.H. had unlawfully driven or taken a vehicle (Veh. Code, § 10851, subd. (a)) and resisted, obstructed, or delayed a peace officer (Pen. Code, § 148, subd. (a)(1)).

A. *Jurisdictional Hearing*

The evidence at the jurisdictional hearing, held on December 28, 2012, and January 2, 2013, included the following.

1. *Victim Rodas's Honda Was Stolen*

Milvian Rodas testified that her green 1998 Honda CRV was stolen on December 1, 2012. On that day, she had parked the car in her driveway about 8:10 a.m., noticed it was missing about 11:30 a.m., and then called the police. She was still in possession of the only key to the vehicle, and no one else had permission to drive the car. Rodas next saw her car on December 3, 2012, at a tow yard in Richmond. She was able to start the car with her key.

Rodas testified that she was the registered owner of the car, although at trial she could not recall the license plate number or identify the car from a video of the gas station where it was recovered from T.H.

2. *Officer Noonan Observed T.H. Driving A Stolen Car*

Richmond Police Officer Debra Noonan testified that she was a closed-circuit television operator who monitored cameras throughout Richmond, including one that viewed a Gasco gas station on the corner of Harbor Way and Pennsylvania. About 6:48 p.m. on December 1, 2012, Noonan observed a Honda moving forward and backward, as if the driver was attempting to park it, near one of the Gasco pumps. Using a “telescoping mechanism” on the camera, Noonan observed that the license plate number was 4CBW265. Noonan ran a check on the number.¹

¹ A video depicting what Noonan observed on her camera monitor was admitted into evidence as the People’s Exhibit 1, although it was of poor quality.

Officer Noonan observed an individual wearing a white, short-sleeve t-shirt emerge from the driver's side of the car and walk off camera towards the cashier. Another person in a dark hooded shirt and a baseball cap got out of the passenger side, went around the back of the car to the rear fender area of the driver's side, and returned to the passenger seat. (The inference being that the driver paid the cashier and the passenger pumped the gas.)

After both individuals reentered the Honda, Officer Noonan broadcast to Richmond police officers that the car was preparing to exit eastbound. As the Honda started to leave the Gasco station, a patrol vehicle arrived. The driver of the Honda fled the car and ran westbound, with one or two officers giving chase.

3. *Officers Loucas and Brown Chased T.H. and His Cohort*

About 6:48 p.m. on December 1, 2012, Richmond Police Officer Ernest Loucas responded to a dispatch regarding a stolen vehicle in the Gasco station parking lot. When Loucas arrived at the scene, another officer had activated his emergency equipment and pulled his patrol car in front of the Honda to prevent it from leaving. The driver and passenger doors of the Honda opened, and the two occupants ran in different directions. Loucas and another officer chased down the passenger (T.H.'s codefendant, C.C.), who was wearing a black jacket and blue jeans.

Meanwhile, Richmond Police Officer Jodi Brown arrived at the Gasco station and saw a male, wearing a white shirt and jeans (T.H.), running from the driver's side of a green Honda CRV. Brown started to chase T.H. on foot.

4. *Officer Ricchiuto Arrested T.H., and T.H. Made Statements*

When Richmond Police Officer Michael Ricchiuto arrived at the Gasco station, he observed officers chasing one individual northbound (C.C.) and Officer Brown chasing another individual in a white t-shirt and jeans westbound (T.H.). Ricchiuto joined Brown in pursuit; after Ricchiuto ordered T.H. three or four times to stop, T.H. finally complied.

Ricchiuto ordered T.H. to the ground with his hands behind his back, and T.H. was handcuffed and arrested.²

Officer Ricchiuto drove T.H. to the police station. On the way, Ricchiuto “was asking him, you know, talking to him what’s going on.” According to Ricchiuto, T.H. replied: “[W]ell, only dummies get caught and I got caught. I know—know it was a stolen car. I shouldn’t have driven it. I need to make [b]etter decisions.”

At the police station, Officer Ricchiuto read T.H. his *Miranda* rights. T.H. acknowledged those rights, Ricchiuto asked him if he wanted to give a statement, and T.H. replied, “yes.” T.H. then stated that he and “his buddy” (C.C.) were at the BART station when two friends approached in the vehicle. They said the vehicle was stolen and asked T.H. if he wanted to drive it. C.C. drove the car to the gas station, where T.H. put in \$5 worth of gas so they could drive it. Once T.H. started to drive the car, the police stopped them. T.H. said that he knew the car was stolen, took full responsibility for his actions, and said he did not intend on doing anything like that in the future.

5. *Police Investigation*

In a search of C.C. that night at the police station, police found in C.C.’s jacket an automobile key with blue painter’s tape around its head. It appeared to Officer Ricchiuto that the key may have been “shaved” so that, like a screwdriver, it could be used to start a car with a worn ignition, and then removed without turning off the car. Ricchiuto explained that shaved keys can be used to start an older car because the tumblers in the ignition are worn.

Richmond police crime scene investigator Bashar Zeida inspected the reported stolen car at the Gasco station the night of December 1, 2012. The car was a dark green Honda CRV, license number 4CBW265. Everything inside appeared intact except the

² Officer Brown testified that T.H. complied with Ricchiuto’s order to lay on the ground, but was not complying with Ricchiuto’s order to put his hands behind his back; she landed on T.H.’s shoulder with her knee, which resulted in his face being scraped on the pavement. Ultimately, T.H. complied.

ignition switch: the car was running but there was no key in the ignition, which was in the “on” position.

6. *Admission of Exhibits 6 and 7*

As discussed at length *post*, the trial court admitted Exhibit 6 (a printout indicating the recovery of a stolen vehicle and registration information) and Exhibit 7 (another printout showing registration information), over T.H.’s objection. The prosecutor had offered this evidence to establish that it was Rodas’s vehicle that T.H. had stolen.

B. *Jurisdictional and Disposition Orders*

The juvenile court sustained the vehicle theft allegation, deeming it a felony, but dismissed the resisting arrest charge. At a disposition hearing in January 2013, the court continued T.H. as a ward, removed him from his mother’s custody, and committed him to a rehabilitation facility. No maximum period of confinement was specified and no precommitment credits were awarded.

This appeal followed.

II. DISCUSSION

A. *Admission of CLETS Printouts (Exhibits 6 and 7)*

T.H. contends the court erred in admitting two CLETS printouts, on the ground that the documents were inadmissible hearsay because they did not constitute official records. We conclude that any error in this regard was harmless.

1. *Background*

Exhibits 6 and 7 purport to be printouts from the CLETS database. At trial, Officer Noonan explained that CLETS contains information for law enforcement, including information about stolen vehicles, impounded vehicles, and vehicle registration. Kerry Sloss, a senior investigator at the district attorney’s office who printed out and certified Exhibits 6 and 7, confirmed that CLETS includes information from the Department of Motor Vehicles (DMV) as well as other material such as rap sheets and missing persons reports.

Exhibit 6 consists of two pages, both of which are dated December 28, 2012, and bear a certificate from the district attorney's office that they are true and original documents received from CLETS.

The first page of Exhibit 6 purports to record the recovery of a stolen 1998 green Honda CRV, license number 4CBW265, by the Richmond Police Department. Investigators Zeida and Sloss explained that, when a car is reported stolen, information concerning the vehicle and the victim is inputted from a police report into CLETS; and when the vehicle is recovered, information concerning its recovery is inputted as well. The first page of Exhibit 6 states "immediately confirm with ori/CA 0480700 Vallejo PD," indicating the case originated in Vallejo. Under "Victim Data," Milvian Rodas is listed. Thus, this first page of Exhibit 6 ostensibly links the vehicle recovered from T.H. by Richmond police with the vehicle reported stolen by Rodas.

The second page of Exhibit 6 purports to provide registration information concerning Honda license number 4CBW265. The registered owner (R/O), however, is listed as Lepe Manolo from San Pablo. Sloss testified that she retrieved this second page of Exhibit 6 from CLETS on December 28, 2012.

Exhibit 7 is a one-page computer printout, also certified by the district attorney's office as a true and original document received from CLETS, dated January 2, 2013. The document bears the words: "Owner as of: 12/01/12," and "Prior R/O: Rodas Milvian." Sloss identified Exhibit 7 as a document setting forth DMV registration information, which she requested and printed out from CLETS on January 2, 2013.

Sloss explained the difference between the registration information on the second page of Exhibit 6 and Exhibit 7. In creating Exhibit 6, Sloss requested the registered owner of the vehicle without specifying a date, and the resulting printout shows that Lepe Manolo became the owner on December 21, 2012. In creating Exhibit 7, Sloss requested the registered owner on December 1, 2012, and the resulting printout shows Rodas as the registered owner as of that date. Accordingly, Exhibit 7 shows that Rodas was the registered owner of the Honda on the day it was stolen and the day it was recovered.

The prosecutor sought admission of Exhibits 6 and 7 under the hearsay exception for official records. (Evid. Code, § 1280.) T.H. objected, claiming the prosecutor had failed to establish the elements of the exception, including the requirement that the documents were made within the scope of a public employee's duty. When the court questioned whether the debate was a "tempest in a teacup" given the testimony of the witnesses, the prosecutor opined that the exhibits were needed to prove that Rodas was the registered owner of the vehicle found with T.H. at the gas station, since Rodas could not identify the vehicle in the gas station video or remember the car's license plate.

2. *The Court's Ruling*

With a thorough recitation of its reasons, the juvenile court ruled that Exhibits 6 and 7 were admissible as official records. In brief, the court concluded that the elements of the official records exception were met because: (1) a custodian of records need not testify for purposes of the official records exception; (2) Penal Code section 11108, subdivision (a) requires police to timely submit DMV records, including registration, of vehicles reported stolen; (3) Vehicle Code section 1800 requires the DMV to keep timely and accurate registration information; and (4) Evidence Code section 664 presumes that official duties are timely and properly performed.

3. *Law*

There is no dispute that Exhibits 6 and 7 were offered for their truth and accordingly constitute hearsay. (Evid. Code, § 1200.) The prosecutor offered Exhibit 6 as evidence that the Honda T.H. was driving at the Gasco station was stolen (or that Rodas's Honda had the license plate number of the vehicle T.H. had driven), and Exhibit 7 to prove that the stolen Honda's registered owner on December 1, 2012, was Rodas.

Evidence Code section 1280 sets forth a hearsay exception for official records: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies: [¶] (a) The writing was made by and within the scope of duty of a public employee. [¶] (b) The writing was made

at or near the time of the act, condition, or event. [¶] (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.”

“[U]nlike the business records exception, which ‘requires a witness to testify as to the identity of the record and its mode of preparation in every instance,’ Evidence Code section 1280 ‘permits the court to admit an official record or report without necessarily requiring a witness to testify as to its identity and mode of preparation if the court takes judicial notice or if sufficient independent evidence shows that the record or report was prepared in such a manner as to assure its trustworthiness.’ [Citation.]” (*People v. Martinez* (2000) 22 Cal.4th 106, 129 (*Martinez*); *id.* at pp. 129-134 & fn. 8 [CLETS documents showing defendant’s prior convictions admissible as official records, in light of statutory duty of public agencies to maintain such records and statutory presumption that such duties are performed properly].) A trial court has broad discretion in determining whether the foundational requirements for the official records exception have been met. (*Id.* at pp. 119-120.)

4. *Harmless Error*

Even if the juvenile court erred in admitting Exhibits 6 and 7, the error was harmless because there is no reasonable probability the trier of fact would have reached a different result if the exhibits had not been admitted. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

T.H. argues that, without the CLETS exhibits, there was no way to tie Rodas’s green Honda to the one T.H. was driving at the Gasco station, because Rodas did not know the license plate number of her car and could not identify her car in the video of the station. In other words, without Exhibit 6 and 7, it could not be proved that the car in T.H.’s possession was taken from the true owner without the owner’s permission. (Veh. Code, § 10851, subd. (a) [violation requires proof that defendant drove or took a “vehicle not his or her own, without the consent of the owner thereof”].)

T.H. is incorrect. Aside from Exhibits 6 and 7, overwhelming evidence established that the vehicle T.H. was driving was not his, and that he drove it without the owner’s consent. Rodas testified that her green 1998 Honda CRV was taken from her

driveway on December 1, 2012, she was the only one who had a key (and still had it in her possession), she had not given anyone permission to drive the car, and she reported the theft to the Vallejo police. Later that same day, Officer Noonan saw a stolen green 1998 Honda CRV being parked at a gas station in Richmond, and when Richmond police arrived, T.H. got out of the driver's side of the car and fled, repeatedly refusing to heed Officer Ricchiuto's commands to stop. The Honda's motor was running without a key in the ignition. Rodas later recovered her car from a Richmond tow yard, and could start this vehicle with her key. This evidence in itself is more than enough to establish that the car that T.H. was driving, and that was towed to the Richmond tow yard, was indeed Rodas's car, and she had not given him permission to drive it. (See *People v. Clifton* (1985) 171 Cal.App.3d 195, 198-201[victim's testimony of purchase and sole possession of car, although not registered when stolen, was sufficient to establish ownership for purposes of Veh. Code, § 10851].)³

T.H. fails to establish error.

B. *Sufficiency of the Evidence of Vehicle Theft*

A violation of Vehicle Code section 10851, subdivision (a) requires proof that the defendant drove or took a vehicle belonging to another person, without the owner's consent, and with the specific intent to permanently or temporarily deprive the owner of title or possession. (*People v. Windham* (1987) 194 Cal.App.3d 1580, 1590.)

T.H. contends that, even if the CLETS printouts were properly admitted, the evidence was insufficient to prove that he did not have permission to drive the vehicle. (*People v. Lam* (2004) 122 Cal.App.4th 1297, 1301.) We disagree.

As discussed *ante*, even without Exhibits 6 and 7, the evidence was sufficient to prove that Rodas owned the Honda that T.H. was caught driving, and that she had not given T.H. permission to drive it. Certainly the evidence *with* those exhibits was sufficient as well.

³ In addition, T.H. *admitted* to police that he knew the car he was driving was stolen, in a statement he now claims was inadmissible. (See discussion *post*.)

T.H. nonetheless argues that Exhibits 6 and 7 contradicted each other and suggested that someone *else* might have been the registered owner. Therefore, he hypothesizes, someone else might have given him permission to drive the car.

His argument is meritless for several reasons. First, the exhibits were not in conflict: Exhibit 7 shows that Rodas was the registered owner on December 1, 2012, when the car was stolen; Exhibit 6 shows that the car was sold later in December to Lepe Manolo. Second—even aside from his *admission* that he knew the car was stolen (see *post*)—there was ample evidence T.H. knew that neither he nor C.C. had permission to drive the car: when the police blocked the car from leaving the gas station, both T.H. and C.C. ran away, leaving the car behind; there was no key in the ignition, even though it was running; and T.H. never claimed that he or C.C. had the owner’s permission to drive the car. Third, T.H.’s argument merely asks us to reweigh the evidence, which is not our role; our role is to decide whether there was substantial evidence from which a trier of fact could find a lack of consent, and on this record, there was.

C. Miranda

T.H. contends his statement to Officer Ricchiuto in the patrol vehicle was obtained in violation of *Miranda, supra*, 384 U.S. 436. He further argues that his post-*Miranda* statement at the police station was the result of a two-step custodial interrogation prohibited under *Missouri v. Seibert* (2004) 542 U.S. 600 (*Seibert*). He is incorrect.

1. Background

Officer Ricchiuto transported T.H. in his patrol vehicle to the police station, after T.H.’s arrest and while he was in handcuffs. Over defense objection on *Miranda* grounds, Ricchiuto testified: “[d]uring the transportation [T.H.] elected to talk to me without me . . . instigating any conversation. He spoke that—he incidentally said [‘]Only dummies get caught, and I got caught.[’]” (Italics omitted.) When asked if he could say more about the conversation, Ricchiuto responded that “during the ride . . . to the station I was asking him, you know, talking to him what’s going on and that—and he said [‘]well, only dummies get caught and I got caught. I know—know it was a stolen car. I shouldn’t have driven it. I need to make [b]etter decisions.[’]” He was upfront and

honest.” (Italics omitted.) Ricchiuto did not question T.H. about these statements in the police car.

About seven or eight minutes later, and about 15 minutes after T.H.’s arrest, Ricchiuto read T.H. his *Miranda* rights in the juvenile holding facility at the police station. T.H. was not handcuffed, and Ricchiuto did not threaten him or offer him enticements to talk. T.H. acknowledged his rights and agreed to make a statement.

According to Officer Ricchiuto, T.H. then stated: “[H]im and his buddy were at the BART station at 17th and MacDonald when another two friends approached him in the vehicle. They said hey, this is a stolen vehicle. Do you want to drive it. Knowing it was stolen and it needed gas, [T.H.] said that his buddy drove it from the BART station to the 10th and Pennsylvania, the gas station at 695 Harbor Way to put gas in it. He said he put five dollars worth of gas in it so he could drive the vehicle, and then said that once he started driving it the police stopped him. And then he said that he knew it was a stolen vehicle, takes full responsibility for his actions, and he said he, you know, he basically manned up and said that he didn’t intend on doing anything like this in the future.”

2. *Analysis: Statement in Police Car*

Miranda protections apply only to custodial interrogations. (*Miranda, supra*, 384 U.S. at p. 444; *People v. Ochoa* (1998) 19 Cal.4th 353, 401.) The parties do not dispute that T.H. was in custody when he was transported to the police station while handcuffed in a police vehicle after his arrest. The question is whether Officer Ricchiuto’s statement to T.H.—“what’s going on”—amounted to an interrogation.

“[T]he term ‘interrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301, fns. omitted (*Innis*)). The issue is not the officer’s subjective intent, but instead involves an objective assessment of “the total situation . . . by considering such factors as the length of the interrogation, the place and time of the interrogation, the nature of the questions, the conduct of the police and all other relevant circumstances.” (*People v.*

Stewart (1965) 62 Cal.2d 571, 579.) “ ‘Interrogation,’ as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself.” (*Innis*, at p. 300, fn. omitted.)

Officer Ricchiuto’s statement to T.H., “what’s going on,” did not amount to an interrogation for purposes of *Miranda*. The ride to the police station lasted only about 15 minutes. During that time, the officer did not ask T.H. any other question (aside from an inquiry about the scrape on his face). He did not ask T.H. about the stolen vehicle or about T.H.’s flight from the scene, and even after T.H. mentioned the stolen car, the officer did not follow up. In context, the officer’s remark was merely part of general casual conversation and did not reflect any compulsion beyond the custody itself. We therefore cannot say the officer should have known his statement would elicit an incriminating response. (*People v. Mobley* (1999) 72 Cal.App.4th 761, 791-792 (*Mobley*) [officer’s small talk with defendant “ ‘to lighten things up’ ” during transport to jail, “was neither direct interrogation nor its functional equivalent that was likely to elicit an incriminating response”], overruled on another ground in *People v. Trujillo* (2006) 40 Cal.4th 165, 181, fn. 3.)

T.H. urges that Officer Ricchiuto should have known his remark was likely to elicit an incriminating response because: T.H. was a minor, he was handcuffed in a police car, the officer was now focused on T.H. as one of the culprits, and the officer’s inquiry would likely be interpreted as pertaining to the stolen vehicle. T.H. thus attempts to distinguish *Mobley* on the ground that the defendant in that case was an adult and the officer who made small talk with the defendant was not the arresting or investigating officer. But the fact that T.H. knew he was under arrest and going to the police station when Ricchiuto asked “what’s going on” would make it *less* likely that T.H. would be willing to incriminate himself; and notwithstanding T.H.’s age and handcuffs, the record does not reflect circumstances so coercive as to transform the neutral inquiry of “what’s going on” into one that required an incriminating response. (See *People v. Claxton* (1982) 129 Cal.App.3d 638, 654-655 [juvenile hall supervisor’s question, “ ‘What did you get yourself into?’ ” was a “neutral inquiry” that did not require an inculpatory

reply], disapproved on another ground in *People v. Fuentes* (1998) 61 Cal.App.4th 956, 969, fn. 12.)

In sum, the court did not err in admitting evidence concerning T.H.’s statement to Officer Ricchiuto in the patrol car. Furthermore, even if the admission of that evidence *had* been erroneous, the error would have been harmless because T.H. later told Ricchiuto again—*after* waiving his *Miranda* rights—that he knew the vehicle he was driving was stolen. To the extent T.H. argues that this post-*Miranda* statement was inadmissible too, we address the issue next.

3. *Analysis: Statement in Police Station*

T.H. does not dispute that the *Miranda* warnings he was given at the police station were adequate and he voluntarily waived those rights. Instead, he claims that the statement he gave after waiving his *Miranda* rights was obtained as a result of an impermissible two-step interrogation.

A suspect’s voluntary statement in custody, made after a waiver of *Miranda* rights, is not rendered inadmissible merely because he also made an incriminating in-custody statement before the *Miranda* warning. (*Oregon v. Elstad* (1985) 470 U.S. 298, 305-311 [rejecting full application of “fruit of the poisonous tree” analysis and deciding that suspect’s awareness of having “let the cat out of the bag” was not dispositive].)

An exception arises where law enforcement initially interrogated the subject without a *Miranda* warning, and after getting an incriminating statement advised the suspect of his rights and elicited the same or additional statements, for the purposes of evading *Miranda* protections. (*Seibert, supra*, 542 U.S. 600, 604-606 [arresting officer questioned subject for 30-40 minutes and made a “ ‘conscious decision’ ” to withhold *Miranda* warnings, pursuant to police department protocol to “question first, then given the warnings, and then repeat the question ‘until I get the answer that she’s already provided once’ ”].) In short, a deliberate intent to evade *Miranda* by this two-step

procedure may render the statements inadmissible. (See *People v. Rios* (2009) 179 Cal.App.4th 491, 505.)⁴

The question, therefore, is whether Officer Ricchiuto deliberately withheld *Miranda* warnings in the police car, with an intent to elicit information in a manner that would effectively deprive T.H. of his *Miranda* protections. This is a factual question we review for substantial evidence. (See *People v. Camino* (2010) 188 Cal.App.4th 1359, 1372; *United States v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 974.)⁵

Substantial evidence supports the conclusion that Officer Ricchiuto did not engage in a two-step interrogation process for the purpose of evading *Miranda*. Unlike the 30-minute interrogation that was calculated to evade *Miranda* protections in *Seibert*, there was no evidence here that the Richmond police department had a policy of deliberately

⁴ According to the plurality in *Seibert*, circumstances to be considered in determining the effectiveness of the post-admission *Miranda* warnings include “the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator’s questions treated the second round as continuous with the first.” (*Seibert, supra*, 542 U.S. at p. 615.) Concurring, Justice Kennedy narrowed the exception to circumstances where the two-step interrogation technique was used in a calculated way to undermine *Miranda*, in which case the post-*Miranda* statement must be excluded in the absence of curative measures taken before the post-*Miranda* statement is made. (*Id.* at pp. 620-622 (conc. opn. of Kennedy, J.)) Because Justice Kennedy’s concurrence provided the narrowest rationale, it constitutes the holding of the case. (*United States v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1157.)

⁵ T.H. did not object to the admission of his post-*Miranda* statement on the ground that the *Miranda* warning was ineffective under *Seibert*. Instead, counsel objected generally to some “*Miranda* violation.” Respondent therefore argues that T.H. waived and forfeited the argument he now asserts on appeal. T.H. counters that any specific *Seibert* objection would have been futile: since the trial court did not find the complete failure to give warnings in the police car to violate *Miranda*, it would not have found *Seibert* to bar T.H.’s statements. On this basis, T.H. argues, the absence of a more specific objection does not bar review. (See *People v. Price* (1991) 1 Cal.4th 324, 386-387; *People v. Abbaszadeh* (2003) 106 Cal.App.4th 642, 648.) We need not decide the waiver issue, in light of the substantial evidence that Ricchiuto did not intentionally evade *Miranda*.

withholding *Miranda* warnings until a suspect confessed, and Ricchiuto did not state that he withheld the warnings to evade *Miranda* protections. The officer asked only the one neutral question of T.H., and when T.H. replied with a provocative and incriminating statement, the officer did not seize the moment to follow up, but instead asked no further questions. And only about 15 minutes transpired between T.H.’s arrest and his arrival at the police station and admonition, suggesting the officer was not intending to use the trip to end-run *Miranda*.

T.H. argues that Officer Ricchiuto’s query had no legitimate purpose, and he cannot understand why Ricchiuto, an experienced officer, did not read the *Miranda* warnings when arresting T.H. or placing him in the police car. One explanation, however, is that the officer saw no reason to read T.H. his *Miranda* rights at that point because the officer *did not intend to interrogate* T.H. until they got to the station—again suggesting that the officer had no design to evade *Miranda*. (See *Seibert, supra*, 542 U.S. at p. 620 (conc. opn. of Kennedy, J.) [“officer may not plan to question the suspect or may be waiting for a more appropriate time”].) Essentially, T.H. asks us to reweigh the evidence on this point; but we review for substantial evidence, which is apparent from the record.

Elstad, rather than *Seibert*, applies here. Because T.H. knowingly and voluntarily waived his *Miranda* rights, his post-*Miranda* statements were properly admitted.

4. *Harmless Error*

Even if both of T.H.’s statements to the police were improperly admitted, the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) The evidence against T.H. was overwhelming: he was seen in a video from a police monitoring camera driving a stolen vehicle; when officers blocked the vehicle from leaving, T.H. immediately got out from the driver’s side and fled, initially ignoring the pursuing officer’s repeated commands to stop; T.H.’s passenger had a “shaved” key for stealing cars; and the car was found to be running without a key in the ignition. In addition, for all the reasons stated *ante*, there was overwhelming evidence that Rodas was the owner of the car, and she never gave T.H. permission to drive it. Thus, the evidence,

even without T.H.'s admissions that he knew the car was stolen, established his guilt beyond a reasonable doubt.

D. *Maximum Term of Confinement*

The juvenile court removed T.H. from parental custody and committed him to a rehabilitation facility, but did not specify either in its oral pronouncement or its written order the maximum term of confinement. The parties agree that the matter should be remanded for the juvenile court to specify the maximum term of confinement. (Welf. and Inst. Code, § 726, subd. (d); Cal. Rules of Court, rule 5.795(b); see *In re Julian R.* (2009) 47 Cal.4th 487, 497.)

E. *Precommitment Credits*

A minor is entitled to precommitment credit for time spent in juvenile hall pending resolution of the charges against him. (*In re Eric J.* (1979) 25 Cal.3d 522, 533-536; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067; *In re Antwon R.* (2001) 87 Cal.App.4th 348, 352; *In re J.M.* (2009) 170 Cal.App.4th 1253, 1256.) Here, the juvenile court did not award precommitment credits orally or in its written order. The parties agree that the case must be remanded for determination of precommitment custody credits.

III. DISPOSITION

The matter is remanded for the juvenile court to specify the maximum term of confinement and to determine precommitment custody credits. In all other respects, the jurisdictional and disposition orders are affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.