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Judge Excludes Statements by Retarded Man

By David Houston

Daily Journal Staff Writer

Statements made by a mentally disabled Glendale man are inadmissible in his upcoming trial on child pornography charges because the police failed to read him his *Miranda* rights, a federal judge ruled Monday.

"I do think he was clearly in custody when the statements were made," U.S. District Judge Nora Manella said, "and the *Miranda* warning should have been given."

But Manella ruled that Robert Wachter made the statements voluntarily and, therefore, they could be used to impeach him if he decides to testify at trial, which is scheduled to begin May 15.

"We're very pleased. Judge Manella was very fair to us," said Michael J. Proctor, one of the deputy federal public defenders representing Wachter. "We hope the government is going to

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reassess this entire case."

Assistant U.S. Attorney Barbara Masterson clearly was stunned by the judge's ruling.

"I think it's in my best interest not to talk to you right now," Masterson said, considering whether the U.S. attorney's office planned to continue its case against Wachter.

U.S. attorney's office spokesman Thom Mrozek said later that, "as of this time, we still have an active prosecution."

Wachter, 31, has an IQ of 81 and sold newspapers at the Santa Anita racetrack for a living. He lived with his brother, Harold, a convicted sex offender, in a Glendale apartment because both their parents are dead, according to court papers filed by his defense attorneys.

Around 6:40 a.m. on Aug. 19, 1999, several Glendale police officers arrived at the Wachter apartment, guns drawn, to investigate allegations that Harold Wachter had exposed himself to some neighborhood children he was babysitting.

Police handcuffed Harold Wachter, who is 38, and took him out on the porch. Robert Wachter was ordered to take a seat in the living room. He was told that

he must stay seated for his safety and the safety of the officers, the police said.

More than an hour later, after the police searched the apartment, they questioned Robert Wachter. During the interview, he told the officers that he downloaded child pornography and that it was on a disc labeled "do not touch" sitting by a computer.

He told them that he had been downloading child pornography for several months and that he liked to look at it because it aroused him. But he also told them that he downloaded the pictures because he wanted to help the police prosecute child pornographers, according to the police report.

The police didn't arrest Robert Wachter that day. They did arrest Harold, and he since has pleaded guilty to state charges and is expected to be sentenced to seven years in prison.

Robert Wachter was left homeless, living out of his car or with friends. The police did not arrest Wachter until a year later, when he showed up at the Pasadena courthouse for a hearing in his brother's case.

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