

Trial ordered in shooting on Hwy. 1

Murder
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A judge Tuesday ordered a San Jose restaurateur to stand trial for murder in the shooting of another motorist along Highway 1 in Capitola, noting that the accused gunman could have simply driven away from the roadside conflict.

David Turturici, 41, of Aptos, will be arraigned Sept. 10 in Santa Cruz County Superior Court on a charge of murdering Los Gatos software engineer Rick Foster, 39, on Feb. 8 near the northbound 41st Avenue exit.

Turturici, who remains free on bail and co-owns Bellino Restaurant and Bar in San Jose, has pleaded not guilty and claimed he shot the unarmed man in self-defense.

After a three-day preliminary hearing that ended Tuesday, Judge Bill Kelsay said the prosecution had easily met its burden of showing enough evidence of a crime to send the accused to trial.

Foster was found dead on the roadside from a single gunshot shortly after midnight. He had enough alcohol in his blood — 0.13 — to make him legally drunk. A note in Foster's nearby red convertible with the license plate number of Turturici's gray Mercedes led police to their suspect, who surrendered the next day bearing a bruise on his lip and a scratch on his arm. Witnesses said they saw Turturici pull over first with his hazard flashers on and Foster pull over several yards ahead and walk casually to the other car. No one saw the two men fight.

"You know your client had other options than to pull out a gun," Kelsay told Turturici's lawyer, Ben Rice. "He could drive away. So I'm left with, why did he stay there and pull out a gun?"

That was a question never explored by the defense, which took the unusual step at the preliminary hearing stage of calling its own witnesses — 14 of them — to refute the charge. Instead, most of the defense witnesses were called to testify about the two men's characters in an effort to portray Turturici as an easygoing gentleman and Foster as an angry brute struggling with depression and tem-

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Judge says Turturici must face trial on Hwy. 1 slaying

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The defense finished its case with testimony from Foster's fiancée, Mary Mathena, from Colorado, and her downstairs neighbors. An unwitting defense witness who sat with Foster's family during the hearing, Mathena was called to testify about why she suddenly left Foster in Wyoming during a move to California and asked police to look after her as

she dropped off his belongings.

She proved a disappointing witness for the defense, denying Foster was ever violent with her or made her fear for her safety, and testifying that she looked forward to reuniting with him for Valentine's Day. He later bought her plane tickets to California, and she was to arrive the day he died.

Mathena's downstairs neighbors testified that they called police one time after Foster stormed downstairs and beat on their door

in an apparent rage over their complaints about noise.

"His face was very red, his eyes were bulging, veins were popping out . . . he was obviously very upset," said Mathena's neighbor, Gary Clayton.

The only testimony during the hearing that Turturici fired in self-defense, however, came from his girlfriend, Loretta Lovingood, who said under cross-examination that he told her after the shooting: "I had no choice."

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