

# Murder charge dismissed

Prosecutor: Judge's move only delays restaurateur's case

BY JOHN WOOLFOLK  
Mercury News Staff Writer

In an unusual move, a Santa Cruz County judge Tuesday threw out a murder indictment against a San Jose restaurateur who shot another driver after a freeway dispute along Highway 1 in Capitola.

Judge Robert Yonts agreed with lawyers for David Turturici that prosecutors improperly withheld evidence from the grand jury supporting Turturici's ver-

sion of the Feb. 8 shooting.

Turturici, 41, co-owner of Bellino Restaurant and Bar in downtown San Jose, was indicted in March on a charge of murdering Rick E. Foster, 39, along the highway near the 41st Avenue exit.

The ruling leaves it to prosecutors to seek another indictment or file new charges.

Police found Foster dead from a single gunshot shortly after midnight near his red Mercury Capri. He was unarmed. In the

car was a note with the license plate number of Turturici's gray Mercedes.

Turturici later turned himself in to police, bearing scratches and a bruised lip. He has claimed the shooting was in self-defense.

Attorneys on both sides said it is rare for a judge to overturn a grand jury indictment. The ruling cancels Turturici's Aug. 19 trial date and returns his \$250,000 bail.

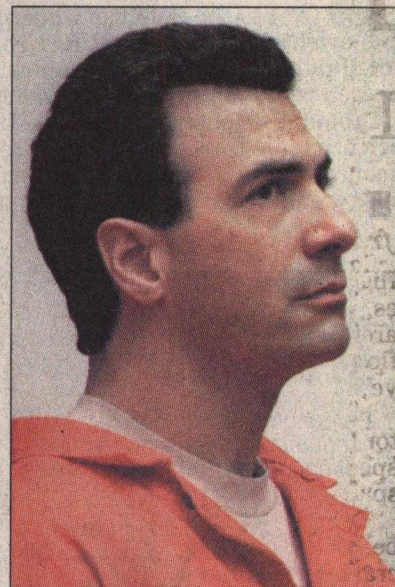
District Attorney Art Danner

said he has not decided whether to appeal the decision or refile the case before another judge. An appeal could take as long as a year, he said.

Chief Deputy District Attorney Jon Hopkins said he was "confused and perplexed" by the judge's ruling but added that it will serve only to delay the case.

"The only thing this changes is the trial date," Hopkins said. "It has no bearing on the outcome of

See **TURTURICI**, Page 4B



**David Turturici**  
Prosecutors consider next move

## Prosecutors ponder next move after judge dismisses indictment

### ■ TURTURICI

from Page 1B

the case."

Only the prosecution presents evidence at grand jury hearings, which usually are closed to the public and the defense. If the grand jury finds enough evidence to support the charge, it issues an indictment and a trial is set.

The grand jury had heard Turturici's story from his brother, Douglas, who had spoken with him the night of the shooting. His brother testified that Turturici was chased by a maniacal driver as he drove over Highway 17 to his Aptos home. Unable to lose his pursuer, Turturici pulled over and put on his hazard flashers, his brother said. The other driver, Foster, allegedly pulled over in front and confronted Turturici.

According to his brother's testimony, Turturici got out and pointed a pistol at Foster. Foster continued to approach, he said, insulted Turturici, challenged him to use the gun, then grabbed it and tried to point it back at him. Foster then punched Turturici, and the gun fired in the scuffle, the brother said.

A pathologist testified that Turturici shot Foster from outside his car at a distance of at

least three feet. Wounds on Foster's hands suggested he had grappled for something like a gun, he said.

Yonts said the prosecution should have offered evidence from two passing drivers who reported seeing a man in a red car pull over in front of another car and approach the other driver. Their testimony would be consistent with Turturici's story and lend credibility to it, he said.

The prosecution also erred in withholding evidence that Foster had a volatile temper, was a heavy drinker and smelled of alcohol the night he was killed, the judge ruled. Such evidence would support Turturici's claim that Foster was acting irrationally and threatening him, he said.

"All that stuff is clearly relevant, and it's a shame the grand jury didn't have that material," defense attorney Ben Rice said.

Hopkins said the evidence in question did not necessarily point to Turturici's innocence or change the fact that he shot an unarmed man.

Foster's ex-wife, Theresa Foster, said she was disappointed by the ruling.

"It just seems like this is never going to end," she said. "I don't think the evidence in any way indicates any justification for the shooting. My ex-husband was a decent human being, and there's no reason for what David Turturici did."