

Turturici sues victim's family

Freeway ^{murder} killer filed suit before his murder acquittal

By ROBERT GAMMON
Sentinel staff writer

SAN JOSE — First he killed the man he said threatened his life. Now David Turturici wants his money.

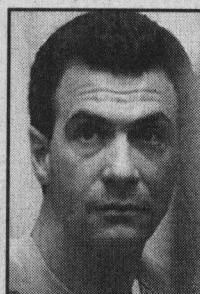
Just two days before being acquitted of murder, and before the victim's family filed a wrongful death suit against him, Turturici registered a personal injury lawsuit against the estate of the man he killed — Rick Foster.

"What he's trying to do is he's trying to take money from the children of the man he gunned down. I think that says a lot about him," county Chief Deputy District Attorney Jon Hopkins said Wednesday.

The heirs to Foster's estate are his children: Daniel and Kelly Foster, ages



Foster



Turturici

6 and 8. Foster's ex-wife, Theresa Foster, a Summit-area resident, was equally outraged by Turturici's claim against her children's inheritance.

"This is an act directed at a 6-year-old and an 8-year-old. I think that

speaks for itself," said Foster, who is the children's legal guardian.

While the jury was still out in the county's first murder trial involving a freeway killing, Turturici, 42, of Aptos, filed the suit Feb. 5 in Santa Clara County Superior Court in San Jose.

Turturici was unavailable for comment Wednesday. The civil attorney who filed the suit on his behalf, Theodore Herhold of Palo Alto, would say only that the Fosters have not yet been served with the complaint.

However, Turturici's criminal attorney, Ben Rice of Santa Cruz, called Wednesday from his vacation in Belize and said he advised Turturici to hire a civil lawyer and file the complaint as a kind of pre-emptive strike against the

wrongful death suit. 2-27-97

"It was purely a defensive move," Rice said.

But when asked why Turturici didn't wait for the verdict or the the wrongful death suit and then file a counterclaim, Rice acknowledged that probably would have been a better idea.

In the complaint, which does not specify monetary damages, Turturici is seeking general and specific awards on the basis that Foster allegedly is responsible for "assault, battery, negligence and intentional and negligent infliction of emotional distress."

Turturici, also claims he "suffered severe emotional trauma and bodily injury as a proximate result of the acts of

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Foster, warranting an award of damages for plaintiff's pain and suffering."

Finally, Turturici, a San Jose restaurateur, is seeking compensation for loss of wages, loss of earning capacity and hospital and medical expenses.

Turturici shot Foster, an unarmed 38-year-old software engineer, in the early morning hours of Feb. 8 in Capitola near the 41st Avenue exit. During his month-long trial, Turturici maintained he killed Foster in self-defense. There were no witnesses to the shooting.

Foster had chased him in his car for 18 miles through the Santa Cruz Mountains, following a traffic dispute in Los Gatos, Turturici said.

When Turturici stopped his car, Foster got out and walked toward him. Turturici testified that he was "petrified" of "this crazy driver." Foster was depicted as a heavy drinker who was prone to angry

outbursts and had finally gone over the edge.

Turturici pulled his loaded handgun, the men got into a scuffle, and Turturici shot Foster once. Then Turturici fled, leaving Foster dead on the side of the highway.

After deliberating for five days, the seven-man, five-woman jury found Turturici innocent of murder and voluntary manslaughter, but deadlocked on a lesser charge of involuntary manslaughter. Ten jurors voted to acquit Turturici on all charges.

The case came to an unusual end when some of the jurors hugged Turturici or shook his hand, saying they were sorry for what he had to go through.

The jury forewoman, Lynette Poncin of Boulder Creek, who spoke to reporters on Turturici's behalf after the trial, said Wednesday that she sympathizes with Turturici and that he has a right to sue the Fosters to help defray the costs of the trial.

"I'm sure the whole thing was costly to him," she said.

The verdict struck a nerve in many Santa Cruzans. Some thought Turturici got away with murder. Others said the verdict sent the wrong message — that it's OK to introduce a firearm into a traffic dispute. But others say this was an extreme circumstance and Turturici had a right to defend himself.

The case took another peculiar turn when nine of the jurors, including Poncin, sent a petition to Hopkins asking him not to retry Turturici on the involuntary man-

slaughter charges. Because of double jeopardy, Turturici cannot be tried again for murder or voluntary manslaughter.

Hopkins said Wednesday he will decide by early next week.

The wrongful death claim filed against Turturici, his parents, his San Jose restaurant and his business partner, Edward Wehr, seeks to reimburse the Foster family for Rick Foster's death. It does not specify damages.

According to the Fosters' civil attorney, Christopher Rudy of San Jose, no response has been filed to the wrongful death claim.