

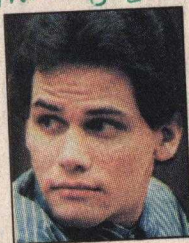
Trial to keep man, 30, in youth facility opens

By David L. Beck
Mercury News

Prosecutor Ariadne Symons, firing the opening salvo in a trial the California Youth Authority hopes will keep its oldest ward locked up for another two years, charged Monday in Santa Cruz Superior Court that convicted child killer Donald Schmidt has been wooing women with young children from his jail cell.

In his opening statement, defense attorney William Weigel urged the jury of eight women and four men to keep their focus on Donald Schmidt today and on the single issue before the court: Whether

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Schmidt

A Santa Cruz Superior Court jury will weigh whether the 30-year-old will remain incarcerated.

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because of mental disorder, Schmidt, who is 30, would be a danger to the public if he were released.

Schmidt was 16 when he climbed into a bathtub with a Lompico toddler named Marihia Silvola, sodomized her and while doing so drowned her to quiet her screams. She died two days later, on New Year's Day 1989.

Schmidt was tried as a juvenile and committed to the youth authority. When he turned 25, the normal age of release from the CYA, his treatment team recommended keeping him for another two years under a law — Section 1800 of the Welfare and Institutions Code — designed to protect the public. Two years later, it made the same recommendation and did so again two years after that in 2001.

All three times, a judge ruled there was probable cause to keep him in custody, giving Schmidt the right to a trial. The first time, he aborted the trial during jury selection. The second time, he was convicted. This is trial No. 3 for Schmidt, under Section 1800.

He and his attorney have admitted to the killing. "The government does not have to prove that he killed her," Weigel told the jury. "He did, and you will hear no evidence from the defense trying to disprove that fact."

Acknowledging "the graphic details of the murder" as outlined by Symons in her presentation, Weigel counseled the jurors not to give in to their natural inclination to hate Schmidt and visit further punishment upon him. "Only use the evidence of the murder as to how it fits into this proceeding," he said. "The prosecutor must prove Donald Schmidt is dangerous to the public today."

Symons, however, argued that far from admitting his guilt in any therapeutically useful way, "He feels *he* is the victim." She laid out what she said is his theory — that his loveless home and his own molestation "destroyed that little girl." "None of it," she said, "is true."

Later, she came to what may be the crux of her case: the suggestion that he is not only unrepentant but unchanged. "You're going to hear that Mr. Schmidt has been writing letters to ladies" professing his love, "trying to establish a relationship."

These women, she said, "have two things in common. The first is, they all have children. They all have pre-pubescent children." And the second is, "They all think he's innocent. He tells them he didn't do it. There was a child molester in that house" where Marihia died, but it wasn't Donald Schmidt, she said.

All the therapists, psychologists and psychiatrists who have examined him agree, she said, that he has "anti-social personality disorder — a very polite way of saying 'psychopath.'"

She called four witnesses Monday. They were longtime Santa Cruz County Coroner Dr. Richard Mason, who showed the jury photographs of the child on the autopsy table. He was followed by a crime scene investigator, and therapists from Schmidt's past and present institutions.

Schmidt is expected to testify in his own behalf. The trial is expected to last three or four weeks.

Contact David L. Beck at
dbeck@sjmercury.com or at
(831) 423-0960.