

Murder Turturici jury has a number of choices

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SANTA CRUZ — When jurors in the David Turturici murder trial get the case after closing arguments today, they will have a plateful of options to consider.

First-degree murder, manslaughter, or self-defense — “the jury could find evidence in any of these charges,” Municipal Court Judge Tom Kelly said Wednesday.

Unlike some other murder cases, the incident in which Turturici admittedly shot Rick E. Foster on Highway 1 has not been narrowed to the obvious question of whether it is a first- or second-degree murder. In this case, a conviction of voluntary manslaughter or an acquittal based on self-defense are also on the table.

In addition to the basic charge of first-degree murder — an unlawful killing committed with premeditation and deliberation — the prosecution has also requested the jury be able to consider a conviction under a year-old state law that makes a shooting made from within a car a first-degree murder.

Though the legislation was written in response to a growing number of drive-by shootings, Chief Deputy District Attorney Jon Hop-

kins contends the law applies in this case.

The defense disagrees and has asked Kelly not to include the option in the jury’s instructions.

Kelly said he will decide that issue before the attorneys present their closing arguments today.

At a brief hearing held outside the presence of the jurors Wednesday, attorney Margaret Marr, a member of Turturici’s defense team, argued Foster’s slaying was clearly an act of self-defense. She asked the judge to remove any version of first-degree murder from the jury’s list of options.

The shooting is not even a case of manslaughter — an unlawful killing without malice aforethought, she argued.

“All the evidence shows that he was dreadfully afraid for his life,” Marr said.

But the judge agreed with the prosecution that the evidence is far from clear-cut.

Though Turturici denies it, Hopkins said the theory that he was “lying in wait to kill” when he pulled over on the freeway shoulder is also a possibility.

“They don’t have to take what (Turturici) said on the stand as truth, especially in light of what he did after (the shooting),” Hopkins said, referring to how Turturici washed his car, threw away the bullet casing and avoided police for a day before surrendering. By that time, police had already linked Turturici to the shooting with a li-

cense plate number that Foster had scrawled on a piece of paper left in his car.

Foster, a 38-year-old software engineer and Summit area resident, was slain Feb. 8 on the northbound shoulder of Highway 1 in Capitola. Turturici, 42, of Aptos, claims Foster — who was driving under the influence of alcohol — chased him for 20 miles from Los Gatos and was determined to kill him for an unknown reason. Until the two men’s paths crossed on Highway 17, they had never met.

As tearful as Turturici was when he testified about his night of “terror” on Highway 17, the judge said Wednesday the jury could very well decide to disregard some or all of his testimony.