

Judge orders trial in highway killing

By MAY WONG

Sentinel staff writer

SANTA CRUZ — A San Jose restaurateur accused in the fatal shooting of a Summit-area man must stand trial for murder, a judge ruled Tuesday.

After three days of testimony at a preliminary hearing, Superior Court Judge Bill Kelsay concluded there is enough evidence to prosecute David Turturici of Aptos for the Feb. 8 slaying of Rick E. Foster, a 38-year-old software engineer. A trial date will be set next month.

The ruling comes a month after another judge dismissed a grand jury indictment against Turturici. In that decision, the judge agreed with the defense that prosecutors should have provided the grand jury with more information on the case.

Kelsay rejected the defense's theory that the shooting occurred because Turturici, 41, was defending himself from a drunken and angry driver.

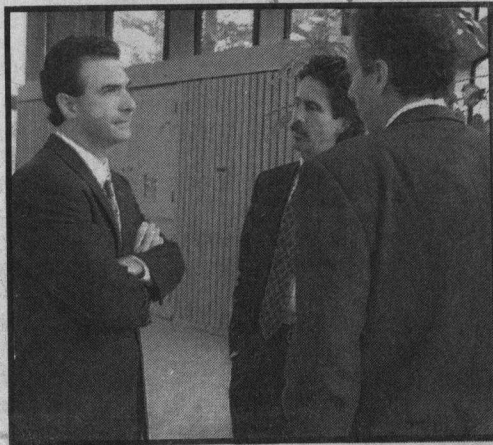
"We know that Mr. Turturici could have driven away, but we also know he decided to pull out a handgun," Kelsay said.

Kelsay agreed with prosecutor Jon Hopkins, who cited a court case indicating that malice is involved whenever a person draws a gun during a volatile situation. Malice is a criteria for first- or second-degree murder.

"We don't know who did what on the road," Hopkins said during closing arguments. "But we know something went on on that highway that caused these two people to pull over. ... And Mr. Turturici made the choice to sit in his car and wait for Foster and pull out a gun."

Foster, unarmed, was shot around midnight on the northbound shoulder of Highway 1 in Capitola. He was found lying on the ground about 35 feet from his red Mercury Capri convertible.

Turturici surrendered to police the next



Richard Tsong/Sentinel

David Turturici and his attorney, Ben Rice, outside the courtroom on Tuesday.

day after authorities linked him to a license-plate number Foster had scribbled on a piece of paper left in his car.

During the preliminary hearing, police testified that witnesses had seen what looked like the two men's cars pulled over on the shoulder that night. Attorneys on both sides agreed that witness accounts, pieced together, implied the following:

The traffic feud began somewhere between Los Gatos on Highway 17, where Turturici had reportedly bought a CD at Tower Records, and 41st Avenue at Highway 1, where the shooting occurred. Turturici, who drove a gray Mercedes Benz sedan, pulled over first with his emergency flashers on.

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Highway shooting

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The driver of the red car seen walking up to the other car. He put his arm on the driver-side door, which was open. Witnesses told police it looked like he was simply helping a stranded motorist. No one saw a gun, or any kind of struggle.

Police and ballistics experts also testified that Foster was shot from at least two feet away and that he was not holding the gun at the time. Police said traces of gunpowder were found in Turturici's car, suggesting the gun was inside the Mercedes when it was fired.

Prosecutor Hopkins also contended:

- The traffic feud "must have been egregious enough" so Foster took the time to write down Turturici's license-plate number.

- Police found Turturici's car in such immaculate condition that only one partial fingerprint belonging to Turturici could be lifted from it.

- The weapon, which later was turned in to police, was nowhere to be found in Turturici's house, though another loaded gun and

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— Bill Kelsay, judge

boxes of ammunition were found there. "He went to great lengths to hide whatever was related to this incident," Hopkins concluded.

Defense lawyers seldom mount an active defense during a preliminary hearing. But attorney Ben Rice called witnesses who portrayed Turturici as a calm, gentle man who never got mad at other motorists, and others who testified that Foster had a problem with anger.

Foster's ex-wife and fiancée testified reluctantly that Foster would get upset with other drivers, and had tailgated another driver in re-

venge at least once. They also said Foster was sometimes verbally abusive to them. They stressed, however, that he never physically harmed them.

The downstairs neighbors of Foster's fiancée in Colorado also testified that they once called 911 for police because Foster was banging and kicking their door, shouting profanities at them.

Foster had a blood-alcohol level of .13 the night of the shooting. The legal limit is .08, and Rice contended Foster snapped. "He was a time bomb," Rice said.

He also contended Turturici had turned on his hazard lights, possibly to call for help. Also, Foster had no known reason to head toward Santa Cruz, Rice said. He had continued south on Highway 1 instead of exiting the freeway at the Summit to go home, he said.

"Who was chasing who?" Rice argued. "The evidence could be interpreted either way."

After the hearing, Rice maintained his client is innocent. "I'm absolutely convinced a jury will vindicate him at trial when we get there," he said.