

# Evidence presented in slaying of motorist

Murder

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## Defense expected to take unusual step of calling preliminary hearing witnesses

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The attorney for a San Jose restaurateur accused of killing another motorist after a freeway dispute earlier this year is expected to take the unusual step of calling witnesses in a preliminary hearing.

On Monday, Santa Cruz County prosecutors began presenting their case against David Turturici, owner of Bellino Restaurant and Bar in downtown San Jose, in a preliminary hearing that could last through the week.

Turturici, 41, of Aptos, has been charged with murder in the shooting of Los Gatos software engineer Rick Foster, 39, just after midnight Feb. 8. Turturici has pleaded not guilty and said the shooting on Highway 1 in Capitola was in self-defense.

### First indictment dismissed

Turturici had been indicted on murder charges in February. However, a judge overturned the indictment in July, saying prosecutors withheld evidence from the grand jury that supported the defense version of the shooting.

Prosecutors have since refiled the case and taken it to a preliminary hearing, a normally routine

event in which they present their best evidence and a judge decides whether it is sufficient to send the accused to trial. The defense is not required to present its own case, and seldom does at this stage.

### Defendant may take stand

But Turturici's lawyer, Be Rice, is planning an active defense, hoping to convince Judge Bill Kelsay to reduce the charge or throw out the case. Prosecutor Jon Hopkins said the defense has raised the possibility Turturici may testify, perhaps as early as today.

Foster was found dead from a single gunshot wound to the chest alongside the highway near the red Mercury Capri. Police were led to Turturici by a note on the seat of Foster's car that had the license plate number of Turturici's gray Mercedes.

Turturici has since said, through his attorney and family members, that Foster, whom he never met, became enraged at him as they drove on Highway 17 and chased him to Highway 1, where Turturici pulled over. Turturici contended Foster ap-

## Defendant may take stand during preliminary hearing

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proached and fought with him, and was shot in the scuffle.

On Monday, Hopkins offered the first public testimony in the case, putting a pathologist and two police officers on the stand.

A few new details emerged. For example, Capitola police Sgt. Herb Ross testified that an examination of Turturici's car revealed only one partial fingerprint from its owner, which he considered unusual, suggesting it had been washed recently. Also, he said,

police found fiber similar to cloth that is used to clean cars on the Mercedes' exterior.

"There should have been latent prints all over that car," Ross said. "The vehicle interior and exterior was extremely clean."

It also was revealed that Turturici's mother initially told police he was not driving the Mercedes because it was not running and that he was using her car, Ross said.

Dr. Richard Mason, a pathologist, testified Foster appeared to have been shot from a distance of two to three feet.

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