



Victim Rick Foster

Turturici jury stalls

Murder
Panel will try to resolve 9-3 split on freeway killing *2-6-97*

By MAY WONG
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SANTA CRUZ — After three days of deliberation, the jurors in the David Turturici murder trial indicated Wednesday they have been unable to reach a unanimous verdict. But they agreed to try again today.

At about 3 p.m. Wednesday, jurors told Municipal Court Judge Tom Kelly they were deadlocked 9-3. The forewoman reported that the

seven-man, five-woman panel had voted several times but remained split on a verdict of a "lesser degree."

She did not indicate which way the jury was divided — second-degree murder, voluntary manslaughter, involuntary manslaughter, or an acquittal — but defense attorney Ben Rice said he smelled victory.

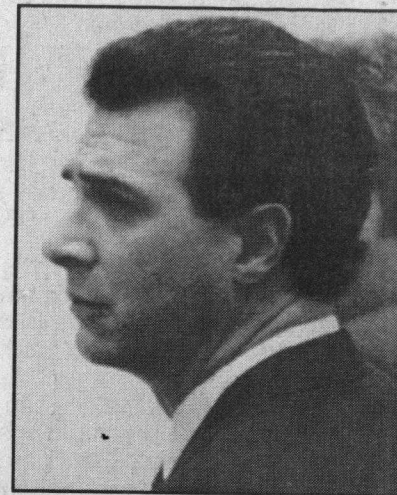
"If I'm reading the jury right, we have nine jurors who are convinced that David is inno-

cent," Rice said. "And I'm hoping that they'll convince the other three to acquit."

Chief Deputy District Attorney Jon Hopkins refused to speculate on the jury's endeavors.

"Nothing is final till the whole thing is over," Hopkins said. "You really can't say what they're doing or which way they're going. They could go in there with renewed energy to resolve the case or they could be steadfast in

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David Turturici

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their positions."

Attorneys on both sides agreed on one thing: the jury is working hard to reach a resolution in the case of the county's first freeway killing.

Turturici, 42, a San Jose restaurateur who lives in Aptos, is accused in the Feb. 8 slaying of Rick E. Foster, a 38-year-old software engineer and Summit-area resident. Foster was fatally shot in the chest around midnight on the shoulder of Highway 1 in Capitola, about 20 miles after the two men first crossed paths on Highway 17 in Los Gatos.

Hopkins contends the shooting was second-degree murder — an unlawful killing with malice aforethought but without premeditation. The defense claims it was self-defense.

The jury began deliberating Monday after receiving an inch-

thick set of instructions laying out what options they could consider.

Their choices run the gamut — from first-degree murder to an acquittal based on self-defense.

But because the jury indicated they were debating over a "lesser degree," Hopkins said that meant they had ruled out first-degree murder at the time.

Even so, Hopkins said, the debate could change once again to include first-degree murder.

"I've seen (capital) cases where it was 11-to-1 in one direction and then it completely went the other way," Hopkins said.

If the jury ultimately does decide it cannot reach a unanimous verdict, the case would end with a hung jury. Turturici, who has been free on bail since early in the case, would be able to go home, no longer accused of murder.

Prosecutors could decide to retry the case, bringing the same or dif-

ferent charges.

Hopkins declined to speculate on what he would do if the jury hangs.

"I would find out how they were deadlocked and what the issues were, and review all that before making any decision," Hopkins said.

Meanwhile, friends and relatives of both Turturici and Foster have sat in the halls of the courthouse for three consecutive days, waiting.

"I've been praying so much, I've worn out my rosary beads," said Rose Costa, Turturici's next-door neighbor.

Terry Foster, the victim's ex-wife, said that though the waiting has been difficult, it is certainly "less unpleasant" than the trial itself, in which the defense repeatedly portrayed Foster as an angry, depressed man who was driving like a maniac, drunk, the night he was killed.