

Hayward man guilty of murder

By Ben Fox
STAFF WRITER

A jury Friday convicted a Hayward man of murdering his 13-year-old girlfriend nearly two years ago. The verdict came after one juror, who held out for acquittal, was removed from the panel.

Although the conviction of Freddie Elrod, 18, for second-degree murder in the December 1994 death of Shannon McClure was "a big relief" to her family, the case may not be over.

Elrod's public defender, Kim Kupferer, said she will appeal the verdict — in part because Alameda County Superior Court Judge Alfred Delucchi on Wednesday removed the lone dissenting juror.

Delucchi declined to discuss why he removed the juror, but Kupferer — who was in closed-door sessions that preceded the female juror's dismissal — said the judge's stated reason was misconduct.

Other jurors had complained to the judge that the woman had used a "more liberal standard" of reasonable doubt than what the law allows and the jury was at an impasse as a result, Kupferer

said.

"It was our position at that point that the judge should have declared a hung jury," Kupferer said.

The law allows judges to remove a juror for a variety of reasons, including bias, ignoring instructions, or failing to adequately deliberate. But such decisions often touch on gray areas and sometimes are used as the basis for appeals, said Gary Mandinach, an attorney and chairman of the State Bar Criminal Law Executive Committee.

The jury began its deliberations late last week after a two-week trial that included the testimony of two young people who were with Elrod and McClure the night of the girl's slaying.

The four youths were hanging out Dec. 20, 1994, at the top of a Southern Pacific Railroad tunnel south of Industrial Boulevard when McClure was pushed 30 feet to the tracks below, breaking her back and ankle.

During the trial, there was conflicting testimony about whether Elrod or another young man at the scene pushed her.

Two witnesses at the tunnel that night testified Elrod

stabbed McClure five times and slashed her throat.

Deputy District Attorney Sarah Horn had sought a first-degree murder conviction, which would have sent Elrod to state prison for at least 25 years to life. The jury, however, decided Elrod did not show the premeditation required for the more severe charge.

He now faces a sentence of 16 years to life in prison. Under a new state law, he must serve at least 85 percent of his term.

Horn said she was "very pleased," with the outcome. It was, she said, "a just verdict."

"It's a big relief that it's over," Dawn Kahn, the victim's mother, said after the verdict was read. "For the last two years we've had this hanging over our heads and I'm glad there will be no more guessing."

Elrod's family did not agree.

"That one juror was still deliberating and they should not have taken her off without just cause," said his stepfather, Ed Palone of Hayward.

Elrod, a juvenile at the time of the crime, will be sentenced Nov. 15.