

## Court filings hint at Robert O'Connell's strategy before plea deal

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QUINCY — Court filings made prior to a plea agreement show Robert O'Connell's attorneys were likely to focus at trial on the medical and criminal history of the man he shot, as well as the development heir's frailty following brain surgery.

Attorneys announced to a judge in Norfolk County Superior Court Tuesday that a plea deal had been struck that will see O'Connell, the soft-spoken son of one of Quincy's most prominent developers, serve seven months in jail and seven years' probation for the 2009 shooting of former Milton firefighter Joseph Fasano.

Two weeks ago, O'Connell's attorneys filed a notice that telegraphed the self-defense case they were prepared to make. Opposition motions from the prosecutor revealed evidence O'Connell's lawyers planned to introduce.

The notice of expert witnesses lists five doctors O'Connell planned to call on during trial for testimony.

Three of the doctors were prepared to testify that O'Connell, 42, was treated for cavernous angioma — a malformation of blood vessels — as well as seizures, panic attacks and depression, and had brain surgery the same month as the shooting.

O'Connell's attorneys wrote in the notice that two of the doctors were "expected to testify as to the dangers to the defendant of any head injuries or blows to the head as a result of the brain surgery performed in December 2009 and that the defendant was so warned."

The doctors' testimony could have bolstered an argument that O'Connell had reason to fear for his life — potentially justifying the use of lethal force — in any physical confrontation.

The shooting was initially described as a road rage incident by authorities. It occurred just before midnight on Dec. 13, 2009, on a ramp at Hancock Street and Commander Shea Boulevard in Quincy. O'Connell, driving in front of Fasano, came to a stop in front of Fasano's car. Both men got out of their vehicles, exchanged words, and O'Connell shot Fasano in the stomach.

Fasano survived the shooting. He was traveling with a former girlfriend of O'Connell's uncle, William O'Connell, in the passenger seat.

The notices also hint that O'Connell's lawyers were going to try to frame Fasano as predisposed to aggressiveness due to past drug use and a diagnosis of Post Traumatic Stress Disorder.

The notice says alcohol and cocaine were detected in Fasano's urine the night of the shooting in a sample taken at the time of his admission into the hospital, and that PTSD could have caused outbursts of anger in Fasano.

Special prosecutor Andrew Berman said in court Tuesday that the plea deal was reached in light of Fasano's fear of publicly dredging up episodes from his past, including the death of his infant daughter.

"He has expressed to me that ... some of the issues which the defendant's lawyers, rightfully so, were going to attempt to raise as an issue in this case would cause him a tremendous amount of stress and anxiety and feeling of being victimized once again," Berman told the judge. "He would have to have publicly aired highly sensitive and personal issues that he has freely admitted to, but with which he clearly has struggled."

Berman filed motions contesting any mention at trial of Fasano's diagnosis, his alleged use and selling of drugs and a 2007 incident in which he purportedly assaulted and beat a woman.

Berman also sought to exclude what he termed "purported evidence" that Fasano, when being asked to leave a bar in Quincy in May or June of 2009, said, "(Expletive) the O'Connells; I am going to kill them."

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