

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 24, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-1605-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERTO G. CASTANON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Racine County:  
EMILY S. MUELLER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Roberto G. Castanon appeals from a judgment of conviction of first-degree reckless injury. He argues that the trial court erroneously exercised its discretion by impaneling an anonymous jury. We conclude that an anonymous jury was justified by the characteristics of the victim and affirm the judgment. While the trial court properly exercised its discretion in

this instance, it is appropriate to remind trial courts that impaneling an anonymous jury is the exception and not the rule.

¶2 In the early morning hours, after heavy alcohol consumption, Castanon and his roommate began to argue. Castanon stabbed his roommate with a knife. Castanon was charged with attempted first-degree intentional homicide and first-degree reckless injury.

¶3 Before jury voir dire, the trial court asked the prosecutor if the State was “requesting voir dire by number.” The prosecution replied affirmatively. The request was granted after hearing Castanon’s objection. The names of the prospective jurors and the jury questionnaires were made available to the parties. The court directed that the jurors were to be addressed by number only and that no specific identifying information be elicited on the record.

¶4 The impaneling of an anonymous jury is within the discretion of the trial court. *See State v. Britt*, 203 Wis. 2d 25, 34, 553 N.W.2d 528 (Ct. App. 1996). To properly exercise its discretion, the trial court must first conclude that a strong reason exists to believe that the jury needs protection. *See id.* This court may afford great deference to the trial court’s conclusion based on the climate surrounding the trial. *See United States v. Childress*, 58 F.3d 693, 702-03 (D.C. Cir. 1995). Further, the trial court must take reasonable precautions to minimize any prejudicial effects on the defendant and ensure that fundamental rights are protected. *See Britt*, 203 Wis. 2d at 36.

¶5 The strong reason recited by the trial court was that the participants had histories of violence and the crime itself involved violence and a weapon. Castanon points out that he did not have a history of violence or potentially threatening associations. While Castanon acknowledges the violent history of his

roommate, the victim, he attempts to minimize it. Witness statements indicated that the victim had threatened Castanon and others with a knife during the course of arguments. The victim was known to always carry a knife and to lose control when drinking alcohol. More importantly, there was evidence that the victim at first wanted to exact revenge on Castanon. The victim initially lied to police about who had stabbed him because he intended to deal with Castanon in his own way. Castanon's attempt to characterize the case as an escalated argument between two intoxicated friends fails in light of the victim's pattern of violent behavior. The trial court could conclude that the victim posed a threat to the jury. It makes no difference that the impetus for an anonymous jury comes from the victim rather than the defendant. *See id.* at 35.

¶6 Castanon argues that the trial court could have protected the jury by excluding the victim from the courtroom during voir dire and sealing the voir dire record. This, he contends, would have eliminated the potential prejudice to him created by an anonymous jury. Not only is Castanon's suggested method burdened with the possibility that other public persons attending the trial during voir dire would reveal the names of the jurors, it also results in an anonymous jury and raises the same claims of potential prejudice. *See id.* at 33-34.

¶7 Potential prejudice to Castanon was minimized by discussing the use of an anonymous jury outside the presence of the prospective jurors. The trial court then informed the prospective jurors, "It is my practice in this court to refer to you by your juror numbers." This explanation to the jurors contrasts sharply with Castanon's perception that the court "essentially told the jurors that they had reason to fear Castanon, and that he was a threat to their security and to the security of their families." The trial court's advisement that the use of numbers

was routine avoided the very inference Castanon suggests. *See United States v. Edmond*, 52 F.3d 1080, 1093 (D.C. Cir. 1995).

¶8 We conclude that the trial court properly exercised its discretion in utilizing an anonymous jury because it concluded a strong reason existed to protect the jurors and it minimized potential prejudice to Castanon. However, we caution trial courts that anonymous juries should not be routine or standard practice. In the absence of compelling circumstances, articulated on the record, the defendant's and the public's right to an open and public proceeding is paramount. *Cf. State ex rel. La Crosse Tribune v. Circuit Court*, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

