

STOVALL V. DENNO, 388 U.S. 293 (1967)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This federal habeas corpus proceeding attacks collaterally a state criminal conviction for the same alleged constitutional errors in the admission of allegedly tainted identification evidence that were before us on direct review of the convictions involved in *United States v. Wade*, ante, p. 218, and *Gilbert v. California*, ante, p. 263. This case therefore provides a vehicle for deciding the extent to which the rules announced in *Wade* and *Gilbert* requiring the exclusion of identification evidence which is tainted by exhibiting the accused to identifying witnesses before trial in the absence of his counsel are to be applied retroactively. See *Linkletter v. Walker*, [381 U.S. 618](#); *Tehan v. Shott*, [382 U.S. 406](#); *Johnson v. New Jersey*, [384 U.S. 719](#). [Footnote 1] A further question is whether in any event, on the facts of the particular confrontation involved in this case, petitioner was denied due process of law in violation of the Fourteenth Amendment. Cf. *Davis v. North Carolina*, [384 U.S. 737](#).

Dr. Paul Behrendt was stabbed to death in the kitchen of his home in Garden City, Long Island, about midnight August 23, 1961. Dr. Behrendt's wife, also a physician, had followed her husband to the kitchen and jumped at the assailant. He knocked her to the floor and stabbed her 11 times. The police found a shirt on the kitchen floor and keys in a pocket which they traced to petitioner. They arrested him on the afternoon of August 24. An arraignment was promptly held but was postponed until petitioner could retain counsel.

Mrs. Behrendt was hospitalized for major surgery to save her life. The police, without affording petitioner time to retain counsel, arranged with her surgeon to permit them to bring petitioner to her hospital room about noon of August 25, the day after the surgery. Petitioner was handcuffed to one of five police officers who, with two members of the staff of the District Attorney, brought him to the hospital room. Petitioner was the only Negro in the room. Mrs. Behrendt identified him from her hospital bed after being asked by an officer whether he "was the man" and after petitioner repeated at the direction of an officer a "few words for voice identification." None of the witnesses could recall the words that were used. Mrs. Behrendt and the officers testified at the trial to her identification of the petitioner in the hospital room, and she also made an in-court identification of petitioner in the courtroom.

Petitioner was convicted and sentenced to death. The New York Court of Appeals affirmed without opinion. 13 N. Y. 2d 1094, 196 N. E. 2d 65. Petitioner pro se sought federal habeas corpus in the District Court for the Southern District of New York. He claimed that among other constitutional rights allegedly denied him at his trial, the admission of Mrs. Behrendt's identification testimony violated his rights under the Fifth, Sixth, and Fourteenth Amendments because he had been compelled to submit to the

hospital room confrontation without the help of counsel and under circumstances which unfairly focused the witness' attention on him as the man believed by the police to be the guilty person. The District Court dismissed the petition after hearing argument on an unrelated claim of an alleged invalid search and seizure. On appeal to the Court of Appeals for the Second Circuit a panel of that court initially reversed the dismissal after reaching the issue of the admissibility of Mrs. Behrendt's identification evidence and holding it inadmissible on the ground that the hospital room identification violated petitioner's constitutional right to the assistance of counsel. The Court of Appeals thereafter heard the case en banc, vacated the panel decision, and affirmed the District Court. [355 F.2d 731](#). We granted certiorari, 384 U.S. 1000, We think also that on the facts of this case petitioner was not deprived of due process of law in violation of the Fourteenth Amendment. The judgment of the Court of Appeals is, therefore, affirmed..

II. We turn now to the question whether petitioner, although not entitled to the application of Wade and Gilbert to his case, is entitled to relief on his claim that in any event the confrontation conducted in this case was so unnecessarily suggestive and conducive to irreparable mistaken identification that he was denied due process of law. This is a recognized ground of attack upon a conviction independent of any right to counsel claim. *Palmer v. Peyton*, [359 F.2d 199](#) (C. A. 4th Cir. 1966). The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned.[Footnote 6] However, a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it, and the record in the present case reveals that the showing of Stovall to Mrs. Behrendt in an immediate hospital confrontation was imperative. The Court of Appeals, en banc, stated 355 F.2d, at 735,

"Here was the only person in the world who could possibly exonerate Stovall. Her words, and only her words, 'He is not the man' could have resulted in freedom for Stovall. The hospital was not far distant from the courthouse and jail. No one knew how long Mrs. Behrendt might live. Faced with the responsibility of identifying the attacker, with the need for immediate action and with the knowledge that Mrs. Behrendt could not visit the jail, the police followed the only feasible procedure and took Stovall to the hospital room. Under these circumstances, the usual police station line-up, which Stovall now argues he should have had, was out of the question."

The judgment of the Court of Appeals is affirmed.

It is so ordered.