

*In in the shadows
we search for
words,
a story,
a poem,
sometimes we don't succeed
words want
light*

A poem written by Albrecht, Filip and Patricia.

From: *Straight from the heart. 25 poems by people with intellectual disabilities*. For you. Compiled by Veerle Schaltin, 2013.

The case of Katie

On March 26, 2020, four suspects are arrested for a violent home robbery. Roy, the 24-year-old victim, is assaulted and suffers multiple lacerations. After taking various valuables, the perpetrators leave him injured. One of the suspects, 21-year-old Katie, met up with Roy earlier that evening. She is suspected of opening the door to others and participating in the robbery.

During the first of four interviews,¹ Katie provides police investigators² with personal details indicating the potential presence of mild intellectual disability. Katie failed to complete the lowest level of practical education. She is in debt, has no work or permanent residence and is trying to qualify for assisted living. Katie has a weekly supervisor and is affiliated with care organizations for people with intellectual disability or mental disorders. She loves visiting the petting zoo once a week. Her lawyer indicates that Katie is overcharged quickly and can only do one thing at a time.

In the second and third interview, Katie is uncooperative and mostly invokes her right to remain silent. She indicates that she does not understand why she is being questioned, does not feel like it and finds it unfair. She expresses the desire for her lawyer's presence, but assumes her to be busy. Katie often fails to comprehend investigators' words and questions, confuses days and has difficulty recalling events. Her unsympathetic answers and seemingly disinterested attitude may have triggered investigators' occasional use of biased remarks, emphases of the seriousness of the offense, moral appeals and an emphasis on the stupidity of staying silent. These pressure-inducing techniques do not result in a heightened willingness to disclose information. Conversely, as Katie grows increasingly irritated, her responses become more concise, evasive and quiet.

After being detained for several weeks, Katie requests a fourth interview in which she starts disclosing information about the case. Katie's lawyer is present and regularly instructs her to stop guessing and clarifies questions and statements for both parties. After the first part of the case-related interview, Katie herself suddenly reveals to be mildly intellectually disabled:

Katie: I am also mildly disabled, so with me it is difficult to [verbalize things]. (...) So with me, if you tell something, then you really just have to tell it clearly in a way. Because otherwise I can't express it. (...) I also never tell people about it [ID] either because I don't like it.

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1. These interviews are part of the dataset of Dutch police interviews collected for this doctoral research. This case is addressed in both Chapter 6 and 8. For privacy reasons, details have been pseudonymized or altered.
 2. In this dissertation, the term 'investigator' has been chosen as the generic term for police officials conducting police interviews (e.g., detectives, officers, interviewers, interrogators) for consistency reasons.

When Katie is asked for the meaning of ‘mildly disabled’, her lawyer indicates that things need to be explained in an easier manner. She indicates that prior questions were far too complex and that it is her role to convert them into layman’s terms. The investigators are glad to learn about Katie’s ID, as they lacked awareness and documentation regarding this aspect. Subsequently, they indicate their willingness to adapt the interview approach accordingly. The investigators then insist on the continuous presence of her lawyer, who up to that point was only partially present in the first interview, even though she was aware of her client’s limitations.

1.1 INTRODUCTION

The prevalence of individuals with mild or borderline intellectual disability (hereafter: ID)³ within the criminal justice system is a notable concern, ranging from approximately 30% (Brand & Van den Hurk, 2008; Drost et al., 2016; Kaal, 2016a, 2019) to as high as 56% in more severe offender populations (Segeren, 2020).⁴ This suggests a significant overrepresentation of persons with ID in police interactions, and the likely presence of ID among at least one-third of suspects in custody.

The aforementioned case of Katie shows several challenges and risks in interviewing suspects with ID. Intellectual disabilities often go unnoticed due to individuals’ streetwise behavior and a misinterpretation of their (non)verbal cues as purposefully uncooperative or confrontational (Ochoa & Rome, 2009). This lack of recognition increases the risk of subjecting this vulnerable group to regular police interviews, including techniques that potentially trigger their susceptibility to compliance, acquiescence and suggestibility. On the one hand, ID suspects may unintentionally provide the police with self-incriminating, inaccurate or irrelevant information (Gudjonsson, 2010; Kaal et al., 2021; Kassir et al., 2018; Perske, 2011; Schatz, 2018). On the other hand, investigators may obtain limited information due to ID suspects’ limitations or incomprehension of questions, while the suspect is actually willing to declare (Kaal et al., 2021; Ochoa & Rome, 2009). Incomprehension and anxiety may lead to resistance, which could be the case with Katie. Therefore, it may take significant time, effort and resources to extract information from ID suspects and investigators may be led astray by erroneous

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3. This dissertation refers to intellectually disabled suspects as ‘ID suspects’ or ‘suspects with (disclosed) ID’, focusing on suspects with mild ID and borderline ID combined. In the Netherlands, the category of mild ID (MID; IQ 50-70) also includes borderline ID (BID; IQ 70-85) in the case of additional problems in adaptive functioning. Recently, there is an increased focus on a persons’ (social) adaptability (De Beer, 2018). In each chapter, the abbreviation ‘ID’ is used to refer to both groups combined. To improve readability, the article ‘an’ is omitted before ID (‘with ID’). Chapter 2 elaborates on the definition, prevalence and recognition of ID.
 4. This percentage relates to the Top600, which is a list of 600 individuals in Amsterdam who have recently committed relatively high numbers of high impact crimes. Public prosecutor’s office. (n.d.). *Top 600 approach*. Retrieved on July 13, 2024, from <https://www.om.nl/organisatie/arondissementsparket-amsterdam/top-600>.

information. This can all negatively impact criminal investigations' efficiency and delay or prevent the solving of a case (Forst, 2013; Leo & Gould, 2009).

The failure to detect ID or adopt suitable interviewing approaches not only jeopardizes the speed, resolution or quality of criminal investigations, it also decreases trust in the judicial system (Gould, 2008). At worst, ID suspects' heightened risk to falsely confess to crimes they did not commit can lead to police errors or miscarriages of justice, resulting in wrongfully convicting innocent individuals or allowing the guilty to go free (Mogavero, 2020; Schatz, 2018; Van Koppen, 2008). A tailored approach enhances the adaptation of more suitable criminal justice interventions⁵ and reduces the likelihood of legal rights violations (and a 'fair trial'), escalation, trauma and recidivism among suspects (Kaal, 2019; Kea & Van Oppenraaij, 2021; Teeuwen et al., 2023).

The police interview is a crucial phase in the suspect's initial contact with the judicial system, influencing subsequent stages of the criminal process. Limited research has been conducted on Dutch police interview practices (e.g., Geijssen, 2018; Verhoeven & Duinhof, 2017), despite the introduction of new international guidelines on the non-coercive investigative interviewing framework (Lacroix et al., 2024; Méndez et al., 2021). Examining the current state of Dutch police interviews with ID suspects is essential to align practices with international standards, ensuring efficiency, quality, completeness and accuracy in information gathering. This dissertation aims to provide insights into the process of detecting ID by investigators and identifies risks and protective factors that influence the overall efficacy of information gathering among ID suspects.⁶

This introductory chapter starts with a description of the extent to which vulnerable ID suspects are addressed in international legislation (Section 1.2). This is followed by the growing focus on this group in the criminal justice system (Section 1.3), the police interview (Section 1.4) and risks regarding information disclosure (Section 1.5). Subsequently, legal safeguards for ID suspects and their challenges are discussed (Section 1.6). Last, this dissertation's main research questions, data and methods are outlined, followed by theoretical and practical contributions of the current research (Section 1.7). This chapter concludes with an overview of the topics discussed in the remaining chapters of the dissertation (Section 1.8).

1.2 PRACTICAL AND LEGAL DEFINITION OF VULNERABLE ID SUSPECTS

Psychological vulnerabilities are considered as potential 'risk factors' when coping with police interviews' demand characteristics and providing the police with

5. The lack of comprehension of legal processes prompts consideration as to whether this vulnerable group should be treated separately outside of the criminal justice system (Teeuwen et al., 2020).

6. This study focuses on suspects, as the Dutch interviewing situation for witnesses and victims is significantly different.

comprehensive and accurate information (Gudjonsson, 2010). The legal definition of vulnerability among suspects, which includes ID, is discussed below.

Legal regulations

There is an increasing attention to the complex concept of vulnerability from both practical and conceptional perspectives (Asquith et al., 2017). An overarching clear and unambiguous legal definition of the specific meaning of the concept ‘vulnerability’ is lacking (Bailleux, 2019; Dehaghani & Newman, 2017; Mergaerts, 2021). The European Court of Human Rights (ECtHR) acknowledged the vulnerable position of all suspects involved in police investigations in rulings in 2000 and 2008.⁷ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR⁸) does not explicitly define ‘vulnerability’. In 2013, the European Commission issued a non-binding Recommendation⁹ on strengthening procedural rights for vulnerable suspects or accused in criminal proceedings, particularly those unable to understand or effectively participate due to age, mental or physical conditions, or disabilities. Member States are urged to presume vulnerability for individuals with serious psychological, intellectual, physical, sensory impairments, mental illness, or cognitive disorders (Article 7).

In the Netherlands, the importance of vulnerability is mostly emphasized for juvenile suspects under 18 years of age, with regard to the presence of a defense lawyer (Article 28b and 28c Dutch Code of Criminal Procedure (DCCP)) or in cases where a mental disorder, psychogeriatric condition or intellectual disability influences suspects’ culpability when imposing a sentence (Article 39 Dutch Penal Code (DPC)). The future revision of the DCCP pays attention to persons suffering from ID or a mental disorder (Van den Brink et al., 2024).

The Dutch judicial ‘Instruction on audio and video recordings of interviews of declarants, witnesses and suspects’ (hereafter: Instruction AVR¹⁰; The Board of Procurators General, 2021¹¹), defines apparent vulnerability in an interview situation as 1) being a minor or having a 2) limited intellectual ability or

7. See e.g., ECtHR Grand Chamber, November 27, 2008, No. 36391/02 (Salduz vs. Turkey) and ECtHR Grand Chamber, June 27, 2000, No. 21986/93 (Salman vs. Turkey).

8. Council of Europe, No. 15. Retrieved on July 13, 2024, from https://www.echr.coe.int/documents/d/echr/convention_ENG.

9. Commission Recommendation (27 November 2013) on ‘procedural safeguards for vulnerable persons suspected or accused in criminal proceedings’, European Commission 2013/ C 378/02.

10. In Dutch: *Instructie auditieve en audiovisuele registratie van verhoren van aangevers, getuigen en verdachten* (2021). This succeeds the previous ‘Aanwijzing AVR’ (2013) and is not accessible by third parties. Retrieved on July 13, 2024, from <https://www.om.nl/onderwerpen/beleidsregels/instructies/algemeen/instructie-auditieve-en-audiovisuele-registratie-van-verhoren-van-aangevers-slachtoffers-getuigen-en-verdachten>.

11. See: <https://www.om.nl/onderwerpen/beleidsregels/instructies/algemeen/instructie-auditieve-en-audiovisuele-registratie-van-verhoren-van-aangevers-slachtoffers-getuigen-en-verdachten>. Retrieved on July 15, 2024.