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Criminal Law - Knowledge Is Not Required to Satisfy the Aggravating Circumstance of Killing a Police Officer: State v. Compton

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CRIMINAL LAW—Knowledge is Not Required to Satisfy the Aggravating Circumstance of Killing a Police Officer: *State v. Compton*

I. INTRODUCTION

In *State v. Compton*,[1] the New Mexico Supreme Court reviewed the death penalty sentence that was given Joel Lee Compton for the first degree murder of a police officer.[2] Among the eleven issues raised on appeal[3] was whether the State had to prove that Compton knew his victim was a police officer in order to make the offense eligible for the death penalty.[4]

The New Mexico Supreme Court affirmed Compton's conviction and sentence of death,[5] holding, *inter alia*, that knowledge was not required

1. 104 N.M. 683, 726 P.2d 837, *cert. denied*, 107 S.Ct. 291 (1986).

2. Under N.M. STAT. ANN. § 31-20A-4(A) (Repl. Pamp. 1981), "The judgment of conviction and sentence of death shall be automatically reviewed by the supreme court of the state of New Mexico."

3. The other issues presented on appeal in *Compton* were: whether the defendant could claim the husband-wife privilege; whether the state's argument during the sentencing hearing was improper; whether the death penalty in this case was excessive punishment; whether the New Mexico death penalty sentencing scheme was unconstitutional; whether the scheme violated due process; whether the trial court erred in refusing to give Compton's jury instructions on mitigating circumstances; whether the mitigating circumstance that "Defendant did not have any significant history of prior criminal activity" was impermissibly vague; whether the New Mexico death penalty sentencing scheme was unconstitutional in that it provided no standard of evidence for jury deliberations; whether the trial court erred in permitting "death qualification" of the jury pool; and whether the death penalty violated the Eighth Amendment's prohibition against cruel and unusual punishment. *Compton*, 104 N.M. at 685, 726 P.2d at 839.

4. Under New Mexico law, the status of the victim can be an "aggravating circumstance" which by statute makes the crime eligible for the death penalty. N.M. STAT. ANN. § 31-20A-5 (Repl. Pamp. 1981) lists the seven aggravating circumstances that the sentencing body is limited to considering. The first aggravating circumstance provides: "A. [T]he victim was a peace officer who was acting in the lawful discharge of an official duty when he was murdered." *Id.* At least one of the statutorily-enumerated aggravating circumstances must be found before the death penalty may be imposed. *Id.* at § 31-20A-4(C)(1).

5. *Compton*, 104 N.M. at 685, 726 P.2d at 839. Compton's sentence was later commuted to life imprisonment as part of Governor Toney Anaya's mass commutation of all death sentences in New Mexico on November 26, 1986. This blanket commutation was upheld in *State ex rel. Schiff v. Smith* (motion argued Dec. 22, 1986) against a challenge by Bernalillo County District Attorney Steve Schiff who sought a writ of mandamus, or in the alternative a writ of prohibition, to compel District Court Judge Woody Smith to set a date for the execution of Compton and others on death row. The request for the writ was denied as the New Mexico Supreme Court held in an oral decision that the commutation was within the Governor's power to pardon under the New Mexico Constitution. *See also* N.M. CONST. ART. V, § 6.

For Compton, the question of how to interpret the statute under which he was sentenced to die is now moot. However, the aggravating circumstance of killing a police officer still exists and could form the basis for future death sentences and appeals similar to the *Compton* case.

on the part of the accused to satisfy the statutory aggravating circumstance of killing a police officer.[6] This Note will examine two factors that influenced the decision in *Compton*. First, it will discuss the court's reading of the United States Supreme Court's decision in *United States v. Feola*[7] and the New Mexico court's confusion over the applicability of the *Feola* rationale to the *Compton* case. Second, this Note will look at how the criminal law principles of deterrence and retribution necessitate a requirement of knowledge on the part of the accused regarding his victim's identity, and how the lack of such a requirement renders the statute constitutionally suspect. Finally, this Note will present several alternatives to the court's "strict liability"reading of the statutory aggravating circumstance in *Compton* that may bolster the statute's effectiveness and constitutionality.

II. STATEMENT OF THE CASE

Joel Lee Compton arrived in Albuquerque in February 1983 with his wife and her young daughter.[8] Unable to find work and nearly destitute, Compton began to drink excessively.[9] One night, after drinking at a local bar, Compton returned to the motel where he was staying and forced his way into the room adjacent to his.[10] His neighbors ejected Compton from their room, but Compton returned with a rifle and began punching out windows.[11] At this point, the fight spilled over into the parking lot.[12] A passing couple saw the rifle and called the police.[13]

Officer Gerald Cline arrived on the scene, along with a civilian who was participating in the Police Department's "Ride-along" program.[14] Compton disappeared into the shadows near his room.[15] As Cline approached the spot where Compton had been, a shot rang out and Cline collapsed.[16] Compton then emerged from the shadows, stood over the

6. *Compton*, 104 N.M. at 693, 726 P.2d at 847.

7. 420 U.S. 671 (1975).

8. *Compton*, 104 N.M. at 686, 726 P.2d at 840.

9. *Id.*

10. *Id.* Compton had rented Room 24 at the Tewa Lodge on Central Avenue. *Id.* He forced his way into Room 25 ostensibly to tell his neighbors to lower the volume of the music they were playing. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* The fight was broken up, and although Compton had been injured during the fracas, he managed to regain control of the rifle. *Id.* He fired a shot into the street and everyone scattered. *Id.* He then returned inside his room and asked his wife how everything was outside. *Id.* She replied that the police were coming. *Id.*

14. *Id.* The account of the shooting is based on the testimony of Alfred Gibson, the citizen who was participating in the police department's "Ride-along" program. *Id.*

15. *Id.*

16. *Id.* Cline had left his revolver in its holster while he investigated the scene. *Id.* He reported through his walkie-talkie that a subject was walking away. *Id.*

officer, and walked away.[17] Cline was later determined to have died almost instantly from a bullet wound through the heart.[18]

Compton was tried and convicted of first degree murder.[19] At the sentencing phase of his trial,[20] the jury found that the aggravating circumstance of killing a peace officer existed, and upon deliberation, recommended that Compton be sentenced to death.[21] The conviction and sentence were

17. *Id.* Compton then ran across the street and pointed the gun through a car window at a couple who had driven up to a nearby restaurant. *Id.* Noticing the arrival of other police cars, Compton threw the rifle onto the roof of the car and proceeded to lie down, spread-eagled, in the parking lot. *Id.* The police apprehended Compton in this position. *Id.*

18. *Id.*

19. *Id.* at 685, 726 P.2d at 839. Under N.M. STAT. ANN. § 30-2-1 (Repl. Pamp. 1984) all first degree murders are deemed capital felonies, and thereby eligible for the death penalty should an aggravating circumstance exist.

Compton was also tried, convicted, and sentenced to eighteen months imprisonment for the commission of aggravated assault. *Compton*, 104 N.M. at 685, 726 P.2d at 839.

20. The New Mexico statutory scheme prescribing the procedure for sentencing in death penalty cases is as follows:

After the defendant is found guilty of a capital felony, *i.e.*, first degree murder, a separate sentencing proceeding is conducted to determine whether the defendant should be sentenced to death or life imprisonment. N.M. STAT. ANN. § 31-20A-1(B) (Repl. Pamp. 1981). This separate sentencing proceeding takes place immediately following the trial before the same judge and jury as the original trial. *Id.*

At this penalty phase of the proceedings, both prosecution and defense may present additional evidence beyond what was adduced at trial and may present witnesses who typically would testify to the defendant's character and chances for rehabilitation. *Id.* at § 31-20A-1(C). In deliberating, the jury considers the existence and relative weight of "aggravating" and "mitigating" circumstances, as enumerated in sections 5 and 6 of the death penalty statutes. *Id.* at § 31-20A-2(A). The New Mexico death penalty scheme outlines seven "aggravating circumstances" and nine "mitigating circumstances." *Id.* at §§ 31-20A-5, 31-20A-6. Although the jury may consider only those seven aggravating circumstances that are statutorily-defined, it may consider any mitigating factor it deems relevant, whether listed in the statute or not. *Id.* at § 31-20A-2.

After the sentencing proceeding is completed, the jury retires to deliberate. Before it may recommend the death penalty, the jury must fulfill the following procedural requirements outlined by the statute:

> (1) The jury must unanimously find one of the aggravating circumstances listed in the statute to exist beyond a reasonable doubt, and also must specify which circumstance, if any, that it does find. N.M. STAT. ANN. § 31-20A-3 (Repl. Pamp. 1981); (2) The jury must weigh whatever aggravating circumstances it finds exist against any mitigating factors that it deems worthy of consideration, N.M. STAT. ANN. § 31-20A-2(B) (Repl. Pamp. 1981) and (3) The jury may recommend the death penalty only if it reaches that decision unanimously. N.M. STAT. ANN. § 31-20A-3 (Repl. Pamp. 1981).

The extensive guidelines and numerous constraints of the New Mexico capital punishment sentencing scheme reflect the concern over procedure that was engendered by the landmark United States Supreme Court decision in Furman v. Georgia, 408 U.S. 238 (1972), which held that giving juries too much discretion in choosing whether to impose the death penalty constituted a violation of the Eighth and Fourteenth amendments to the U.S. Constitution. For further discussion of New Mexico's death penalty sentencing statutes, *see* Silver, *Constitutionality of the New Mexico Capital Punishment Statute*, 11 N.M.L. REV. 269 (1981).

21. *Compton*, 104 N.M. 685, 726 P.2d at 839.

The jury was not asked to consider whether Compton knew that his victim was a peace officer, although defense counsel offered jury instructions to this effect. Defendant-Appellant's Brief-in-

automatically sent up to the New Mexico Supreme Court for review as required by law.[22] The supreme court upheld both the conviction for first degree murder and the sentence of death.[23] In reaching its conclusion, the court held that in order for a jury to find the aggravating circumstance of killing a peace officer, the jury need not determine that the accused knew his victim was a police officer at the time of the killing.[24] Rather, the State need only show that the victim was a peace officer engaged in the lawful discharge of his duties at the time of the killing.[25]

III. DISCUSSION AND ANALYSIS

In reaching its conclusion, the *Compton* court read incorrectly the United States Supreme Court case on which it relied, *United States v. Feola*,[26] and also failed to closely consider the intent of the New Mexico legislature in drafting the statutory aggravating circumstance of killing a peace officer. Although the court was influenced by what it perceived as the resolution of a similar *mens rea*[27] issue in *Feola*, Part A of this Analysis will show how the court's reliance on that case was misplaced.

Part B will examine how the court's strict liability interpretation of the statute as not requiring proof of any particular mental state regarding the identity of the victim renders the statute constitutionally suspect. Although the United States Supreme Court has not yet addressed the exact issue posed by *Compton*,[28] this Note will suggest that the views of the Court

Chief at 3, *State v. Compton*, 104 N.M. 683, 726 P.2d 837, *cert. denied*, 107 S.Ct. 291 (1986). The trial court rejected these tendered instructions. *Compton*, 104 N.M. at 693, 726 P.2d at 847. In their place, the court instructed the jury according to New Mexico's uniform jury instructions, which only required the jury to find that Cline "1. [w]as a peace officer; and 2. was performing his duties as a peace officer," at the time he was killed. UJI Crim. 14-7014 (Repl. Pamp. 1986).

22. *See supra* note 2.

23. *Compton*, 104 N.M. at 685, 726 P.2d at 839.

24. *Id.* at 693, 726 P.2d at 847. The court stated: "Thus, we determine that the jury was properly instructed on the aggravating circumstance of killing a peace officer." *Id.*

25. *Id.*

26. 420 U.S. 671 (1975).

27. The concept of *mens rea* has been described as follows: "Criminal liability rests on two basic requirements: proscribed conduct that includes a voluntary act or omission and a blameworthy state of mind. These requirements are termed *actus reus* and *mens rea*, respectively. Neither is sufficient to establish liability; both must be present." Romero, *New Mexico Mens Rea Doctrines*, 8 N.M.L. REV. 127, 128 (1978).

28. The United States Supreme Court denied Compton's petition for certiorari in a memorandum decision that contained only the customary dissent by Justices Brennan and Marshall to all death penalty cases: "Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, [citation omitted], we would grant *certiorari* and vacate the death sentence in this case." Compton v. New Mexico, *cert. denied*, 107 S.Ct. 291 (1986).

The Court had previously denied certiorari to a Missouri case that posed virtually the same issue as *Compton*, Baker v. Missouri, *cert. denied*, 459 U.S. 1183 (1983). In *Baker*, Justice Marshall filed a vigorous dissent arguing that imposition of the death penalty on a defendant who had not been proven to know his victim's identity violated the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.* at 1187. Marshall's dissent was cited by Justice Walters in her special concurrence to *Compton*. *Compton*, 104 N.M. at 696, 726 P.2d at 850 (Walters, J., specially concurring).

already expressed cast doubt on the constitutional vitality of the New Mexico Supreme Court's interpretation of the statute challenged in *Compton*.

Finally, Part C will discuss the court's failure to consider alternative interpretations of the statute. These alternative interpretations consist of construing the statute either to require knowledge, notwithstanding the statute's silence, or to impose a different standard of *mens rea*—for example, recklessness or negligence.

A. The Court's Reliance on United States v. Feola

In support of its conclusion, the New Mexico court adopted the United States Supreme Court's holding in *Feola*[29] that a federal statute proscribing assaults on federal officers did not require that the offender know his victim was a federal officer.[30] However, the New Mexico Court failed to adequately examine the rationale behind the *Feola* decision, and, as a result, the court's reliance on *Feola* was misplaced.

In *Feola*, the United States Supreme Court reviewed the conviction of a defendant who had been charged with assaulting federal officers.[31] The statute proscribing assaults on federal officers is silent as to whether knowledge of the victim's status is required in order to sustain a conviction.[32] Upon examining the legislative history of the statute, the Court concluded that the statute required only proof of intent to assault, not proof of intent to assault someone known to be a federal officer.[33]

The Court's decision not to require knowledge as an element of the

29. 420 U.S. 671 (1975).

30. *Id.* at 684. The Court stated: "All the statute requires is an intent to assault, not an intent to assault a federal officer." *Id.*

31. *Id.* at 676. The defendant in *Feola* was also charged and convicted of conspiring to commit the assault, under 18 U.S.C. 371 (1940). *Id.* at 673. Discussion of the conspiracy conviction is outside the scope of this Note.

32. The statute proscribing assault states:

> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

18 U.S.C. 111 (1948).

Although the statute does not specifically require knowledge of the victim's identity, it does contain language that suggests that someone who violated the statute would ordinarily have such knowledge. For example, with the exception of undercover agents, it is difficult to imagine that someone who assaults a federal officer "on account of" that officer's performance of an official duty would not have some idea of that officer's identity. Indeed, the victim's status as an agent of the federal government may be precisely the reason prompting the assault.

Justice Stewart pointed out in his dissent to *Feola* that the language of the statute was originally limited to cover only assaults on federal officers "on account of" their official duties. *Feola*, 420 U.S. at 702 (Stewart, J., dissenting). The phrase "while engaged in" was not added until the statute was recodified in 1948. *Id.* This observation forms the basis for Justice Stewart's argument that the statute as originally passed was intended to embody a knowledge requirement, and that the change in 1948 was not designed to dispense with this requirement. *Id.*

33. *Id.* at 686.

federal statute hinged upon its interpretation of the statute's purpose.[34] The Court viewed the act's primary purpose to be the protection of federal officers by granting jurisdiction to federal courts to try cases involving such offenses.[35] The Court considered state courts to be "inadequate" to protect federal officers because state officials might not prosecute individuals charged with assaulting federal agents with the same vigor as they would if the victim were a state officer.[36] To give the statute the broadest possible application and thereby bring the greatest number of alleged offenders before the federal courts, the Court dispensed with a requirement

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34. *Id.* at 679.

35. *See generally Feola*, 420 U.S. at 680-84. There were two interpretations of the legislative purpose behind enacting a federal law which proscribed certain offenses directed against federal officers. *Id.* at 683. The first interpretation was that access to the federal courts was necessary to ensure that the greatest efforts would be made to prosecute offenders and vindicate the federal victim. *Id.* at 683-84. *See infra* note 36 and accompanying text. Making it a federal crime to assault federal officers brought these cases under federal jurisdiction. *Feola*, 420 U.S. at 684-85.

Under this interpretation of the statute's purpose, the identity of the victim is important only insofar as it triggers federal jurisdiction. *Id.* at 677 n.9. Since the officer's identity is relevant only to determine where the case is tried, the State need not show that the alleged offender had such knowledge. *Id.* at 685. The Court accepted this interpretation of the statute's purpose and stated: "[E]xistence of the fact that confers federal jurisdiction need not be one in the mind of the actor at the time he perpetrates the act made criminal by the federal statute." *Id.* at 677 n.9.

The Court did not fully accept the second interpretation presented which called for a knowledge requirement and reasoned that the statute was intended to close an apparent gap in state substantive law. *Id.* at 683. This gap was created when states enacted laws mandating increased punishment for assaults on state peace officers, but not federal officers. *Id. See, e.g.*, N.M.STAT. ANN. § 30-22-22 (Repl. Pamp. 1984). In such states, assaults on federal officers would be prosecuted as general assaults with no threat of increased punishment. *Feola*, 420 U.S. at 683. To close this gap, a parallel federal law was needed that punished assaults on federal officers to the same or higher degree as assaults on state officers. *Id.* Such a federal statute would have the same *mens rea* requirement as its state counterpart, which the Court assumed to demand knowledge. *Id.*

Although the Court in *Feola* recognized such a gap in state substantive law, it declined to view the enactment of *Feola*'s predecessor statute solely as an attempt to close this gap. *Id.* The Court so declined because there was a another section to the predecessor statute (§ 1 of the Act of May 18, 1934, ch. 299, 48 Stat. 781 (1934)) that proscribed the *killing* of federal officers. *Id.* State law at the time typically punished all murders by death, whether the victim was a federal peace officer, a state officer, or a civilian; therefore, no "gap" existed in that area of state law. *Id.*

The Court reasoned that by passing a single act with both sections, Congress was ". . . not only filling one gap in state substantive law but in large part was duplicating state proscriptions *in order to insure a federal forum* for the trial of offenses involving federal officers." *Id.* (emphasis added). The Court rejected the option of treating the two sections of the statute differently, declining to bifurcate its interpretation of the statute. *Id.* at 684 n.18. The result of the Court's refusal to view the statute solely as a gap-filler was to emphasize the jurisdictional purpose of the statute and diminish the importance of a *mens rea* requirement.

36. *Id.* at 684. The Court stated:

> [I]t would not be unreasonable to suppose that state officials would not always or necessarily share congressional feelings of urgency as to the necessity of prompt and vigorous prosecutions of those who violate the safety of the federal officer. From the days of prohibition to the days of the modern civil rights movement, the statutes federal agents have sworn to uphold and enforce have not always been popular in every corner of the Nation.

Id.

that the accused have knowledge of his victim's identity.[37] As the Court succinctly summarized, "In a case of this kind the offender takes his victim as he finds him."[38]

The New Mexico Supreme Court quoted the above language in *Feola* to support its holding in *Compton*.[39] However, the *Compton* court failed to note that while both statutes embodied a similar legislative intent to protect peace officers, they differed in how they accomplished that purpose. The federal statute was designed to afford protection through the creation of a federal forum.[40] The New Mexico statute was not needed to confer jurisdiction on state courts for offenses against peace officers committed in New Mexico, as such jurisdiction was already conferred generally by the New Mexico Constitution.[41] Therefore, the New Mexico legislature must have had another goal in mind when it passed the *Compton* statute.[42]

Most likely, the legislature considered the statute's value to be its effect as a deterrent. By imposing the death penalty for the murder of a peace officer—a harsher penalty than would normally apply to murder cases—the legislature must have been attempting to deter attacks on a group that it felt especially deserving of such protection. In addition to the deterrent value of the statute, morale among peace officers may well have been improved by the legislative acknowledgement of the unusual risks that are faced by law enforcement officers.[43]

Deterrence, however, is a fundamentally different type of protective mechanism from the type of protection afforded by the statute in *Feola*.[44] The failure to recognize this distinction made the New Mexico Supreme Court's reliance on *Feola* misplaced. Had the court in *Compton* perceived

37. *Id.*

38. *Id.* at 685.

39. *Compton*, 104 N.M. at 692, 726 P.2d at 846.

40. *See supra* notes 34-36 and accompanying text.

41. Article VI of the New Mexico Constitution deals with the creation of the judicial branch of state government and states: "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution. . . ." N.M.CONST. ART. VI, § 13. Jurisdiction over killings of peace officers is nowhere excepted in the Constitution.

42. Unfortunately, the legislative history of statutes passed by the New Mexico Legislature is not documented. Therefore, legislative intent must be inferred from the statute itself.

43. *Feola* refers to the prohibition against attacks on peace officers as "a matter essential to the morale of all federal law enforcement personnel." *Feola*, 420 U.S. at 685 n.18.

44. Notwithstanding Justice Stewart's trenchant dissent, *see supra* note 32, the *Feola* opinion gives scant attention to the concept of deterrence. As discussed, the Court seized on the importance of creating a federal forum in order to afford federal agents protection. *See supra* notes 34-36 and accompanying text. This view of the statute focuses on what occurs *after* the alleged violation has taken place, namely, where the accused is brought to trial. A discussion of deterrence necessarily addresses what occurs *before* a violation takes place, namely, whether the actor was deterred from committing an offense by the threat of punishment. The Court's conclusion that the statute's purpose was to create jurisdiction, therefore, obviated much discussion of the statute's value as a deterrent.

the statute's basis as being firmly grounded in deterrence, the court may have seen the necessity of requiring some degree of knowledge of the victim's identity.

The *Compton* court misapplied the *Feola* rationale in another way. The court quoted the following passage from *Feola,* but changed the last word in a revealing exercise of judicial license: "The concept of criminal intent does not extend so far as to require that the actor understand not only the nature of his act but also its consequence for the choice of a judicial [remedy]."[45] The passage as it originally appeared in *Feola* used the word "forum" in place of "remedy."[46]

By changing the last word, the *Compton* court worked a subtle shift in the rationale and focus of the *Feola* opinion that lent support to the holding the New Mexico court desired to reach. The original sentence expressed the view that traditional *mens rea* doctrine does not require that an accused have knowledge at the time he acts of the jurisdictional consequences of his action. The question of criminal intent is satisfied if the actor understands the nature of his act.[47]

The *Compton* court's version of the sentence changes the meaning to suggest that traditional *mens rea* doctrine does not require that the actor have knowledge of the "judicial remedy" that his act might trigger. Although the *Compton* court does not explain what it means by the phrase "judicial remedy," remedy generally means the method by which the judicial system will enforce a right or redress the violation of a right.[48] In a criminal law context, the phrase parallels the notion of punishment. The *Compton* court's version therefore suggests that an actor need not know the extent to which he may be punished for engaging in certain proscribed activity.[49] The *Compton* court went astray when it applied this view of criminal intent—that knowledge need not extend to the punishment prescribed for a particular crime—to the aggravating circumstance of killing a peace officer. The court chose to treat the victim's identity purely as a circumstance "surrounding and attending a capital murder"

45. *Compton,* 104 N.M. at 692, 726 P. 2d at 846.

46. *Feola,* 420 U.S. at 685.

47. *Id.*

48. Black's Law Dictionary defines remedy as "The means by which a right is enforced, or the violation of a right is prevented, redressed, or compensated". BLACK'S LAW DICTIONARY 1163 (5th ed. 1979).

49. The court's view is consistent with traditional notions of criminal intent. The fact that a mistake of law is not usually a defense to a criminal violation demonstrates that our legal system does not require that an accused be aware of the forbidden nature of the act he is committing. *See generally* W. LAFAVE AND A. SCOTT, CRIMINAL LAW, 412-416 (2nd ed. 1986) [Hereinafter cited as LaFave & Scott]. This idea is embodied in the maxim, "Ignorance of the law is no excuse." Similarly, it is no defense to argue that one did not know the extent to which an act was punishable. *Id.*

rather than as an element of capital murder itself.[50] This treatment allowed the court to reason that because the victim's identity bears only on the issue of punishment, whether the accused knew the victim's identity at the time of the offense is outside the scope of criminal intent.[51] The court's re-wording of the passage from *Feola* supported this conclusion and demonstrates another way in which reliance on *Feola* was misplaced.

B. The Principles of Deterrence and Retribution as Applied to Compton

Deterrence and retribution are two theories of punishment that underlie much of criminal law.[52] The United States Supreme Court has recognized deterrence and retribution as the only two permissible justifications for the imposition of the death penalty.[53] Without a "knowledge" requirement, it is doubtful that the *Compton* statute meets either of these goals, and therefore may not be capable of withstanding constitutional scrutiny.

1. Deterrence

The *Compton* court recognized that one of the goals inherent in the statutory aggravating circumstance of killing a peace officer is the protection of police officers.[54] By not requiring knowledge of the victim's identity, however, the court removed the linchpin from the deterrent mechanism afforded by the statute. In so doing, the court not only diminished the statute's effectiveness but also rendered the law constitutionally suspect.

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50. *Compton*, 104 N.M. at 693, 726 P.2d at 847.

This approach contrasts with that adopted in some states which makes the victim's identity as a peace officer one of the elements for the offense of "capital murder". *See, e.g.*, the Texas statutory definition of "Capital Murder":

> (a) A person commits an offense if he commits murder as defined under Section 19.02 (a)(1) of this code and:
>
> (1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and *who the person knows* is a peace officer or fireman;

TEX. PENAL CODE ANN. § 19.03 (Vernon 1974) (emphasis added).

51. *Compton*, 104 N.M. at 693, 726 P.2d at 847.

52. *See generally*, LAFAVE & SCOTT, *supra* note 49, at 25-27.

53. Enmund v. Florida, 458 U.S. 782 (1982).

> [T]he death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)). Unless the death penalty . . . measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering' and hence an unconstitutional punishment (quoting *Coker v. Georgia*, 433 U.S. 584, 592 (1977)).

Id. at 798.

54. *Compton*, 104 N.M. at 693, 726 P.2d at 847.

Deterrence is generally described as a theory of punishment under which the threat of being punished discourages a potential criminal from engaging in criminal activity.[55] For a deterrent to be effective, the actor must be aware that he is engaging in the type of activity that may trigger the appropriate punitive response.[56] If Compton did not know that his victim was a police officer, he could not have been deterred by the aggravating circumstance that triggers the possibility of capital punishment for such an offense. Therefore, the only deterrent in such a situation would be the threat of whatever punishment accompanied the murder of a civilian.[57] Thus, by not requiring that the defendant have knowledge of his victim's status, the *Compton* court effectively reduced the deterrent value of the aggravating circumstance of killing a peace officer to that of a simple first degree murder statute.

In addition, the reading of the statute in *Compton* as not requiring knowledge may render it unconstitutional. The hallmark of the United States Supreme Court death penalty cases has been the Court's constant admonition that capital punishment must not be imposed in an arbitrary or capricious manner.[58] In refining this standard, the Court has stated that the death penalty must measurably contribute to either the goal of retribution or the goal of deterrence in order to escape the Eighth Amendment's prohibition against cruel and unusual punishment.[59] Justice Marshall stated in a dissent to a denial of *certiorari* that reviewed a statute very similar to the one in *Compton,* that knowledge is a necessary component of such a statute to avoid running afoul of the constitution.[60]

Instead of seizing on the necessary nexus between knowledge and deterrence, the New Mexico Supreme Court confused knowledge of the *elements* that enhance a crime with knowledge of the *fact* that a crime carries an enhanced penalty. In *Compton,* the element that enhanced the crime was the victim's identity as a police officer.[61] The court failed to distinguish between knowledge of this element and knowledge of the fact

55. *See generally* LAFAVE & SCOTT, *supra* note 49, at 24-25.

56. One of the best examples of the nature of deterrence is a scene from the film *Dr. Strangelove.* In the title role, Peter Sellers is told that the Russians have developed a secret "Doomsday Machine" that is triggered automatically in the event of a nuclear strike. Sellers cannot conceal his frustration as he asks of the Russian Ambassador: "But the whole point of such a machine is lost unless you tell people about it. Why didn't you announce it to the world?" *Dr. Strangelove* (Columbia Pictures 1963).

57. In New Mexico, the maximum punishment for first degree murder without any aggravating circumstances is life imprisonment. N.M. STAT. ANN. §31-18-14(A) (Repl. Pamp. 1981).

58. The landmark case of Furman v. Georgia, 408 U.S. 238 (1972), announced the principle that "[T]he penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner." Godfrey v. Georgia, 446 U.S. 420, 427 (1980).

59. *See supra* note 52.

60. Baker v. Missouri, *cert. denied* 459 U.S. 1183, 1186 (1983).

61. *Compton,* 104 N.M. at 692, 726 P.2d at 846. *See also supra* note 4.

that an enhanced penalty existed for killing a police officer. The *Compton* court collapsed this distinction in its analysis of a series of statutes that purportedly do not require knowledge.[62]

One of the statutes the court examined was the habitual criminal enhancement statute.[63] This statute mandates that a defendant's sentence be lengthened according to the number of prior felonies he has committed.[64] The court observed that in order to impose the increased sentence, the State would not have to show that a defendant knew that he would be subjecting himself to an enhanced sentence if he committed another crime.[65] Such knowledge would be outside the scope of traditional *mens rea* requirements.[66]

However, the habitual criminal enhancement statute is distinguishable from the statute at issue in *Compton*. The former bears only on the sentencing of a defendant[67] whereas the *Compton* statute deals with an important aspect of the underlying offense—namely, who the victim was. Although raised only during the sentencing stage of the trial,[68] proof of any aggravating circumstance necessarily refers to facts established during

62. *Compton*, 104 N.M. at 693, 726 P.2d at 847. It is not clear that the statutes selected by the court in fact illustrate this point. Among the statutes the court examined are ones that proscribe certain uses of a deadly weapon. N.M. STAT. ANN. § 30-7-1 to -4 (Repl. Pamp. 1984). These statutes do not on their face indicate whether knowledge of the weapon's "deadliness" is an element of the offense. *Id.* Case law, however, has interpreted the question of deadliness to be one for the jury to determine based on a factual examination of the weapon's character and manner of use. State v. Conwell, 36 N.M. 253, 13 P.2d 554 (1932).

It is arguable that such a determination of deadliness would inevitably reflect the jury's assessment of whether the user of such a weapon in fact knew, or at least should have known, that the instrument she wielded was "deadly". Therefore, the "deadly weapon" statutes may in fact require some degree of knowledge, even if only a negligence standard of *mens rea* (*see infra* Section C). If the jury gives any consideration to the circumstances of a crime to determine deadliness, then it is going beyond the scope of the inquiry permitted in *Compton*, where the jury was limited to determining whether the victim was a police officer at the time of the shooting, not whether it was apparent from the circumstances that he held such an occupation. Thus, the deadly weapon statute does not necessarily lend support for a "no knowledge" interpretation of the *Compton* statute.

Another statute the *Compton* court claims does not require knowledge is a statute imposing an enhanced penalty if the victim is over sixty years of age. N.M. STAT. ANN. § 31-18-16.1 (Repl. Pamp. 1981). This statute also could be interpreted as requiring some degree of knowledge based on whether the defendant knew or had reason to know the victim's age. The statute may simply reflect the legislature's judgment that a person's age is fairly apparent and may be surmised from the circumstances, and that an explicit knowledge requirement would unduly burden the prosecution. Alternatively, the omission of a required mental state for age may have been inadvertent. Perhaps most likely, the legislature may not have included any reference to *mens rea* requirements because it lacked the proper framework in which to consider the possibilities. *Mens rea* is an area of criminal law that has been notoriously burdened by confusing and imprecise terms. *See infra* Section C. *See generally* Romero, *New Mexico Mens Rea Doctrines*, 8 N.M.L. REV. 127 (1978).

63. N.M. STAT. ANN. § 31-18-17 (Repl. Pamp. 1981).

64. *Id.*

65. *Compton*, 104 N.M. at 693, 726 P.2d at 847.

66. *See supra* note 49.

67. *See supra* note 61.

68. *See supra* note 20.

the preceeding stage where a defendant's guilt is established for the underlying offense.

Knowledge that a specific criminal act carries with it a certain punishment is quite different from knowledge of a particular element that forms part of a crime. Compton's interpretation of the knowledge requirement did not turn on whether he was aware of the *existence* of the statutory aggravating circumstance of killing a police officer. Rather, his view of criminal intent dictated that the State must demonstrate that the killer knew who his victim was before it could punish him extraordinarily for killing a member of a specially-protected class.

The *Compton* court failed to answer how deterrence is served when the subjective state of mind of the defendant is removed from the jury's consideration. The resultant weakening of the deterrent value of the statute removes one of the constitutional bases on which the death penalty may rest.[69] With deterrence no longer a viable justification for the statute in *Compton*, the only other valid constitutional basis for imposing the death penalty remains retribution.[70]

2. Retribution

The theory of retribution, also called "revenge," "retaliation," and "just deserts,"[71] calls for the infliction of punishment because ". . . it is only fitting and just that one who has caused harm should himself suffer for it."[72] Retribution may be justified on a number of different grounds, including emotional compensation for the victim,[73] the need to restore peace of mind to society,[74] and as a means of suppressing acts of private vengeance.[75] By refusing to infuse the aggravating circumstance of killing a peace officer with a *mens rea* component, the *Compton* court severely weakened the retributive purpose of the statute.

Retribution stands, along with deterrence, as one of the two constitutionally permissible bases for the death penalty.[76] The United States Supreme Court views retribution as being strongly linked to the defendant's mental state at the time the criminal act is committed.[77] The Court's

69. *See supra* note 52.
70. *Id.*
71. LAFAVE & SCOTT, *supra* note 49, at 25-26.
72. *Id.* at 26.
73. *Id.* at 26 n.38.
74. *Id.* at 26.
75. *Id.*
76. *See supra* note 52.
77. Enmund v. Florida, 458 U.S. 782 (1982). In reviewing a sentence of death which had been imposed upon a defendant for his participation in a robbery that resulted in a murder, the Court commented:

> As for retribution as a justification for executing Enmund [the defendant], we think this very much depends on the degree of Enmund's culpability—what Enmund's intentions, expectations, and actions were. American criminal law

emphasis on retribution as being proportionate to the defendant's moral blameworthiness rests on the fundamental assumption that causing intentional harm is more reprehensible than causing unintentional harm, and therefore should be punished more severely.[78] This view formed the basis for the Court's reversal of a Florida defendant's sentence of death following his conviction for robbery and felony murder.[79] Observing that the defendant did not kill or intend to kill, the Court held that the State could not impose the same punishment on him as on a defendant who had manifested those intentions.[80]

The application of the *Enmund* reasoning to the holding in *Compton* reveals the inequities inherent in the New Mexico Supreme Court's interpretation of the statutory aggravating circumstance of killing a peace officer. Under the *Compton* holding, the following scenario is possible: A, a drug dealer, kills one of his customers in order to steal his money. B, also a drug dealer, kills one of his customers for the same reason. However, unknown to B at the time of the killing, B's victim is an undercover narcotics agent. B would be eligible for capital punishment under the statutory aggravating circumstance applied in *Compton*. Under

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has long considered a defendant's intention—and therefore his moral guilt—to be critical to 'the degree of [his] criminal culpability' (quoting *Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975)) and *the Court has found criminal penalties to be unconstitutionally excessive in the absence of intentional wrong-doing.*

Id. at 800 (emphasis added).

The Court in *Enmund* thus held that the death penalty could not be imposed on a defendant who had neither killed, attempted to kill, or intended to kill. *Id.* at 801. The Court, however, did not elaborate on what types of mental states would satisfy the intent requirement. *Id.* The issue of what kind of "intent" would prove constitutionally acceptable had to await a later day.

That day arrived with the Court's decision in Tison v. Arizona, 55 U.S.L.W. 4496 (April 21, 1987). In *Tison*, the Court announced, in a 5-4 decision, that the death penalty could be based in a felony-murder case upon a finding that the defendant played a major role in the commission of the underlying felony and also manifested a "reckless indifference to human life." *Id.* at 4502. Notwithstanding Justice Brennan's vigorous dissent arguing that *Enmund* precluded the Court's holding in *Tison*, *id.* at 4506, the standard adopted by the majority still requires a finding of some culpable mental state.

In requiring at least a showing of "reckless indifference", the Court acknowledged the importance of an individualized determination of culpability to our legal tradition. *Id.* at 4501. Moreover, the Court specifically rejected as too broad a standard the lower court's formulation of a "foreseeability" test of intent. *Id.* at 4500. Such a test would have permitted the State to impose the death penalty based upon a showing that the defendant ". . . anticipated . . . that life would or might be taken in accomplishing the underlying felony (citation omitted)." *Id.* In rejecting the "foreseeability" standard, the Court sought to fulfill the dictates of *Enmund* by requiring that the state show at a minimum that the defendant acted with a reckless indifference for human life. *Id.* The *Compton* court, however, did not even require a finding of reckless indifference on the part of the defendant. Rather, the *Compton* court refused to inquire at all into the mental state of the defendant. *Compton*, 104 N.M. 683, 693, 726 P.2d 837, 847. Consequently, the *Compton* decision stands in marked contrast to both *Enmund* and *Tison*.

78. *See* H.L.A. HART, PUNISHMENT AND RESPONSIBILITY, 162 (1968). Hart is quoted both in Justice Walters' special concurrence in *Compton*, 104 N.M. at 696, 726 P.2d at 850, and in the United States Supreme Court's opinion in *Enmund*, 458 U.S. 782, 798.

79. *Enmund*, 458 U.S. at 798.

80. *Id.*

Compton, it would be irrelevant that B did not know who his victim was. B would be subject to the death penalty even though his knowledge, mental state, and moral blameworthiness would be identical to A's, who would be subject only to a maximum of life imprisonment.

Such unequal treatment would be inconsistent with the United States Supreme Court's edict in *Enmund* requiring a close nexus between a defendant's personal responsibility and the punishment inflicted.[81] Punishment that is not linked to intent does not serve the end of retribution.[82] Without meeting either of the goals of deterrence or retribution, it is questionable whether the reading given the statute in *Compton* by the New Mexico Supreme Court would pass constitutional muster.

C. *Alternatives to the* Compton *Interpretation*

The *Compton* court was faced with the common judicial conundrum of wrestling with the inscrutable problem of *mens rea*. The analysis of *mens rea* issues is often beset by many difficulties.[83] Among these problems is the silence of many statutes as to what mental state is required,[84] a problem faced by the court in *Compton*. In concluding that the statute imposed strict liability, the *Compton* court failed to consider two alternative interpretations that may have resulted in a different outcome. First, the court did not entertain the possibility that although the legislature left the statute silent, it may still have envisioned the offense as requiring some degree of *mens rea*. Second, the court did not consider the possibility of imposing a *mens rea* standard other than absolute knowledge, such as a recklessness or negligence standard.

1. The Ambiguity of Silence as to *Mens Rea* Requirements.

A statute's silence as to the mental state required does not necessarily mean that the legislature intended to dispense with *mens rea* altogether.[85]

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81. *Id.* at 801.

82. *Id.* "Putting Enmund to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts." *Id.*

83. Among the problems that have traditionally plagued *mens rea* analysis are the use of vague, imprecise, and overlapping terms to describe mental states; the application of a single *mens rea* term to an offense that has several *actus reus* elements; and a statute's silence as to *mens rea* requirements altogether. *See generally* Romero, *supra* note 27, at 128-130 (1978); *see also* LAFAVE & SCOTT, *supra* note 48, at 213-215. Thankfully, for both the court, this author, and at this point probably the reader, the *Compton* statute presented only the latter type of problem.

84. *See generally* Romero, *supra* note 27, at 128-130 (1978); *see also* LAFAVE & SCOTT, *supra* note 49, at 213-215.

85. *See* LAFAVE & SCOTT, *supra* note 49, at 243.

> [T]he absence of words in the statute requiring a certain mental state does not warrant the assumption that the legislature intended to impose strict liability; to the contrary . . . it should be presumed that the legislature intended to follow the usual *mens rea* requirement 'unless excluded expressly or by necessary implication' (citation omitted).

Id. at 409. *See also* Romero, *supra* note 27, at 131.

In fact, the presumption in construing silent statutes favors finding a *mens rea* requirement over finding that the statute imposes strict liability.[86] Statutes that have been construed to impose strict liability are usually limited to regulatory offenses that carry a relatively light penalty, such as traffic offenses, or areas where knowledge is particularly hard to prove, such as laws governing the sale of pure foods, liquor and narcotics.[87] The *Compton* statute does not appear to fall within the realm of strict liability offenses.

In determining whether a particular statute imposes strict liability, courts may consider different factors.[88] One such factor is the nature of the punishment provided for the offense.[89] Generally, if the punishment is severe, the statute will be interpreted as requiring some degree of knowledge.[90] The punishment triggered by killing a peace officer is the most severe permitted by our criminal justice system—the death penalty. Although no single factor is dispositive of whether a statute imposes strict liability, the weight of this factor alone in favor of finding a *mens rea* requirement would be difficult, if not impossible, to overcome.[91] If the

86. *Id.* at 409. *See also* Romero, *supra* note 27, at 131. In *State v. Shedoudy*, 45 N.M. 516, 524, 118 P.2d 280, 286 (1941), the New Mexico Supreme Court stated: "[T]he legislature may forbid the doing of an act and make its commission criminal, without regard to the intent with which such act is done; but in such case it must clearly appear from the Act (from its language or clear inference) that such was the legislative intent."

87. LAFAVE & SCOTT, *supra* note 49, at 242 n.1.

Knowledge may be difficult to prove in the areas of "pure" food, liquor, and narcotics law, simply because of the factual situations involving the sale of such goods. *Id.* It may be problematic to show that the seller of mislabelled drugs knew that the drugs were so mislabelled, yet for policy reasons we may still wish to hold the seller criminally liable for the sale of such goods. *Id.*

88. *Id.* at 244. LaFave and Scott describe seven factors that courts may consider. *Id.* at 244-45. "Severity of punishment" is the most germane to the statute in *Compton*. *See* accompanying text.

89. LAFAVE & SCOTT, *supra* note 49, at 244.

90. *Id.*

91. Another factor is "[t]he number of prosecutions to be expected. . . . The fewer the expected prosecutions, the more likely the legislature meant to require the prosecuting officials to go into the issue of fault. . . ." *Id.* at 245. This factor also weighs in favor of finding a *mens rea* requirement in the *Compton* statute, as it seems unlikely that the legislature would anticipate the number of prosecutions for killing a peace officer to be higher than other homicides, none of which are strict liability offenses.

The only factor that may slightly tilt the scales in the direction of strict liability is "[t]he seriousness of harm to the public which may be expected to follow from the forbidden conduct . . . [t]he more serious the consequences to the public, the more likely the legislature meant to impose liability without regard to fault. . . ." *Id.* at 244. However great the harm may be that results from killing a peace officer, it is possible to imagine a criminal violation with even more dire results whose prevention might more properly warrant strict liability (*e.g.*, the sale of impure food or drugs to the public).

A final factor to consider that is pertinent to the facts in *Compton* is "[t]he difficulty prosecuting officials would have in proving a mental state for this type of crime. The greater the difficulty, the more likely it is that the legislature intended to relieve the prosecution of that burden so that the law could be effectively enforced." *Id.* at 245. Although the difficulty of proving a defendant's state of mind should not be minimized, the proof problem does not seem particularly more acute where the State must show the accused had knowledge of the victim's identity than where the State must show any other kind of knowledge. In any case, the difficulty of proving a defendant's state of mind would depend on what mental state was required to be shown. If the requisite state were recklessness or negligence, the difficulty would be lessened considerably. *See infra* Section C(2).

court had undertaken this type of analysis to determine whether the *Compton* statute imposed strict liability, it is likely that it would have concluded that the legislature intended to impose a *mens rea* requirement.

2. Other Possible *Mens Rea* Standards

In interpreting the statutory aggravating circumstance of killing a peace officer, the *Compton* court limited itself to choosing between either a requirement of knowledge or imposing strict liability. The drawbacks to the strict liability reading have been the topic of this Note. The disadvantages to a requirement of actual knowledge should not, however, be discounted. Actual knowledge could be very difficult for the prosecution to prove because it involves the defendant's subjective state of mind.[92] Therefore, a clear compromise would be to adopt either the recklessness or the negligence standard of *mens rea* as outlined by the Model Penal Code.[93]

92. LaFave and Scott suggest that the difficulty of proving defendant's state of mind for a particular offense is one of the factors that courts consider in determining whether the legislature meant to dispense with a *mens rea* requirement. LAFAVE & SCOTT, *supra* note 49, at 245.

93. MODEL PENAL CODE § 2.02(2) (Proposed Official Draft 1962). The Model Penal Code provides:

> Purposely, knowingly, recklessly, and negligently are defined as follows:
>
> (a) *Purposely.*
>
> A person acts purposely with respect to a material element of an offense when:
>
> (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
>
> (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.
>
> (b) *Knowingly.*
>
> A person acts knowingly with respect to a material element of an offense when:
>
> (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
>
> (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.
>
> (c) *Recklessly.*
>
> A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.
>
> (d) *Negligently.*
>
> A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose his conduct and the circumstances known to him, involves

The Model Penal Code describes four distinct states of mind that may be used to fulfill a *mens rea* requirement: purposeful, knowing, reckless, and negligent.[94] Reckless and negligent states of mind require a lesser degree of knowledge than do purposeful and knowing.[95] "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists."[96] Thus in the *Compton* case, the defendant may have acted recklessly with regard to his victim's identity if Compton saw the police car approach and witnessed someone emerge from it, but consciously chose to ignore the probability that the person emerging from the car was a police officer.

Alternatively, a person acts negligently when he *should* be aware of a substantial and unjustifiable risk that the material element exists.[97] Applying this standard again to the *Compton* facts, it might fairly be said that the defendant acted negligently with respect to his victim's identity if Compton did not know his victim was a police officer but a reasonable person in Compton's situation would have known.[98] Some states employ a negligence standard in their capital murder statutes that make the murder of a police officer an offense punishable by the death penalty.[99]

Either by judicial interpretation or by legislative modification, the standards of recklessness or negligence could be applied to the *Compton* statute. The adoption of one of these lesser degrees of *mens rea* would bolster the constitutionality of the statute by requiring that the trier of fact find the defendant acted with some culpability with respect to the police officer's identity. Moreover, such a requirement would not unduly burden the State in its efforts to punish those who take the lives of its law enforcement officers.

> a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

Id.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Note, however, that the Model Penal Code's definition of negligence requires that the actor's deviation from the reasonable person standard be "gross." *Id.* This requirement may reflect a judgment on the part of the Code's drafters that ordinary negligence such as is used in tort law would not be sufficient to warrant the penal sanctions and moral condemnation that normally attend a criminal conviction.

99. *See, e.g.*, the New York Penal Code which defines its version of capital murder as follows:

> A person is guilty of murder in the first degree when:
>
> 1. With intent to cause the death of another person, he causes the death of such person; and
>
> (a) Either:
>
> (i) the victim was a police officer . . . who was killed in the course of performing his official duties, *and the defendant knew or reasonably should have known that the victim was a police officer;* or . . . .

N.Y. PENAL LAW § 125.27 (Consol. 1974) (emphasis added).

IV. CONCLUSION

In *State v. Compton*,[100] the New Mexico Supreme Court examined the statutory aggravating circumstance of killing a police officer and held that the death penalty could be imposed without proving that the accused knew his victim's identity at the time of the killing.[101] The court thus dispensed with any requirement of knowledge, or *mens rea*, on the part of the defendant with regard to her victim's identity.

The decision in *Compton* should have both broad and specific impact. Prosecutors, in attempting to convince juries that the death penalty should be imposed because the accused killed a police officer, will need only introduce evidence that substantiates the decedent's identity.[102] The State will not have the additional burden of proving that the defendant knew his victim was a police officer at the time of the killing.[103]

More generally, the decision in *Compton* may influence how courts perceive the knowledge requirements of other statutes that contain an enhanced penalty based on the victim's identity.[104] If the courts continue to apply the *Compton* approach to statutes that seek to safeguard a particular class of people, the salutary goal of protection will not truly be served. Introducing a requirement of knowledge into such statutes, either legislatively or judicially, would give them actual value as a deterrent device as well as protect the constitutional rights of the accused.

HENRY WIGGLESWORTH

100. 104 N.M. 683, 726 P.2d 837, *cert. denied*, 107 S.Ct. 291 (1986).

101. *Id.* at 693, 726 P.2d at 847.

102. *See supra* note 21.

103. *Id.*

104. A similar issue of knowledge was raised and a similar holding was reached in Rutledge v. Fort, 104 N.M. 7, 715 P.2d 455 (1986). In *Rutledge*, the statute under consideration proscribed aggravated assault upon a peace officer but did not specify whether knowledge of the officer's identity was required. *See* N.M. STAT. ANN. § 30-22-22 (Repl. Pamp. 1984). The New Mexico Supreme Court held that knowledge was not required, with two Justices dissenting (J. Walters and J. Sosa). In her dissent, Justice Walter invited comparison between *Compton* and *Rutledge*, and soberly concluded, "So dies in New Mexico in February 1986 another basic and, heretofore, solemn principle of American jurisprudence." 104 N.M. at 10, 715 P.2d at 458. The *mens rea* aspect of the *Rutledge* holding, however, has been recently overruled in a 3-2 decision by the New Mexico Supreme Court in Reese v. State of New Mexico (26 N.M. St. Bar Bull. 827 (October 8, 1987)). *Reese* states that the court's earlier reliance on the *Feola* decision "was misplaced" (*id.* at 828) and includes a specially concurring opinion by Justice Ransom which adopts the analytical framework suggested by LaFave and Scott and discussed *supra*, text and accompanying footnotes 87-92. Although *Reese* does not necessarily sound the death knell for the court's decision in *Compton*, it does suggest that the court may be open to revisiting the *mens rea* issue in a death penalty case in the future.