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'How can this be?'

The jury's verdict in the killing of off-duty Miami Police Officer Evelyn Gort is bound to evoke deep anger even in those who understand the law and, because they do, think that the jury was right.

A 12-member Dade Circuit Court jury on Tuesday convicted Wilbur Leroy Mitchell, a habitual criminal, of manslaughter. But it acquitted him of attempted first-degree murder, attempted robbery, and armed robbery. So Mitchell escapes a potential death sentence even though Officer Gort shot him before she was fatally shot, and even though her bullet, taken from his body, was in evidence.

"How can this be?" the typical law-abiding person may thunder. "What has happened to the justice system?"

Like it or not, what happened is that the justice system worked, after a fashion. Jury foreman Leonardo Cabrera explains: "We had no eyewitness that can put Wilbur as the killer. We know that he was at the scene of the crime, that he was doing something there, but we could not come to the conclusion that he was the one who shot the gun."

This jury deserves the public's deferential respect for obeying its oath to render a fair verdict "beyond reasonable doubt." Jurors didn't know that Mitchell allegedly confessed to the killing after saying that he didn't want to discuss it without a lawyer. That factor made the confession inadmissible as evidence.

What's puzzling is, If prosecutor Jerald Bagley couldn't meet the "reasonable doubt" threshold on the murder charge, how did jurors decide that he met it on the lesser included offense of manslaughter? "To me it makes no sense," he says. "It really befuddles the

GORT JURY'S VERDICT

It's easy to understand the anger, but there is a reason why the verdict is the right one.

mind." He adds that "it seems to me that this [the manslaughter conviction] was a compromise. They wanted to convict him of something, but there were some who couldn't convict him of murder."

That's understandable. The only known eyewitness was Ms. Gort's boyfriend, Antonio "Tony" Calafell. An armed man confronted them the night of Oct. 30, 1993, demanding money. Officer Gort, in off-duty clothes but armed, drew her police pistol and fired once. The assailant fired twice, killing her.

But Mr. Calafell didn't see the shooting. His back was turned, and the area was dark. He later picked the wrong man out of a police lineup. Another man, David McCray, took Mitchell to Jackson Memorial Hospital on his motorcycle. McCray is now serving 20 years for another robbery.

Under these circumstances, the jurors' verdicts of acquittal appear sound. "You take juries as you get them," muses Mr. Bagley, who'll soon become a Dade Circuit Court judge. "I believe if we had had a different panel, we would have convicted him. . . ."

Yesterday Judge Robbie Barr set Mitchell's sentencing for Feb. 15. Mr. Bagley is asking her to impose a life sentence, with a minimum mandatory 10 years, because Mitchell is a habitual criminal. If justice was served by not convicting this habitual criminal because of reasonable doubt, justice also would be served by sending him to prison for the maximum term possible. Because if Mitchell hadn't been released early from his last prison term, he would have been behind bars instead of in Evelyn Gort's life — and death — in Coconut Grove that fateful night.