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HEADLINE: Foul-ups lead to dismissal of bribe case; City police officer won't face charges again, prosecutors say; 'A mistake was made'; Felony indictment misworded, statute of limitations ran out

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BODY:

Prosecutors thought they had a slam-dunk bribery case against Baltimore police Officer Catherine D. Miele. Her husband turned her in, claiming she sold secret police information. Two of Miele's former friends agreed to take the witness stand against her.

But prosecutors committed an irreversible blunder.

They botched the wording of Miele's bribery indictment, and waited too long to file a misconduct charge, prompting a judge to dismiss the case Monday. The rulings set Miele free, prohibiting prosecutors from trying her again for allegedly profiting from her public position.

Red-faced prosecutors weren't talkative yesterday.

"It's pretty clear that the indictment was defective," said Assistant State's Attorney Elizabeth A. Ritter, supervisor of the economic crimes division and lead prosecutor in the case. "A mistake was made. That's all."

When asked whether the state could retry Miele, Ritter replied, "No."

When asked who drafted the indictment, she said: "The state's attorney's office."

Ritter's boss, Deputy Baltimore State's Attorney Haven H. Kodeck, declined to say yesterday who was responsible for writing the indictment and whether his office would discipline anyone.

"I'm not going to address those questions," he said. "It was an error, and that's what it was."

Since she was indicted last year, Miele, a 16-year veteran of the police force, has been working in a desk job, her police powers suspended. Yesterday, a department spokesman said Miele would remain in an administrative post pending an internal investigation.

"Provided there is no other criminal prosecution, an internal investigation will continue," spokesman Robert W. Weinhold Jr. said.

Miele's lawyers said the department should restore their client's police powers.

"She's a fine officer. She's always been a fine officer," said Dominic R. Iamele, who handled the case with Howard L. Cardin. "She should be returned to the job."

Husband accused her

Miele, 38, was indicted April 17, 1997, charged with bribery, a felony, and misconduct, a misdemeanor. Her husband turned her in to internal affairs detectives in the midst of a bitter divorce.

After an yearlong investigation, prosecutors accused her of running criminal-background checks on police computers and peddling the information to a private investigation firm, Excel Associates in Baltimore. Miele once worked with one of the owners, James Ozazewksi, a former Baltimore police officer, court records show.

The grand jury indictment accused Miele of taking part in a bribery scheme that began May 4, 1994, and ended Feb. 27, 1996. The document charged that she "did bribe a member of the Baltimore City Police Department."

Deadline missed

But the indictment contained two critical flaws.

First, misconduct is a misdemeanor in Maryland with a statute of limitations of one year. By filing the indictment in April 1997 instead of two months earlier, prosecutors missed the cutoff date, and Judge Mabel H. Hubbard dismissed that charge.

The second mistake was fatal to the case. The indictment says that Miele "bribed" a member of the police force. It should have said that Miele "did receive a bribe" as a member of the force, court records show.

Lawyers for Miele didn't say a word about the flawed wording until after the trial began last month. Prosecutors called six witnesses and, during the trial, apparently discovered the mistake and tried to change the wording of the indictment.

"At no time has there been an issue as to the character of the offenses charged," Ritter, the prosecutor, wrote in a motion to the judge. "The defense has at all times proceeded as if the defendant was charged as the bribee."

Ritter asked Hubbard to change the wording of the indictment from "did bribe a member" of the police force, to "did receive a bribe" as a member of the force.

Defense opposed change

Miele's defense lawyers told the judge that it was too late to change the indictment.

The indictment did not charge Miele with receiving a bribe -- the case prosecutors were trying to prove before the jury, defense attorneys argued. They also said they based their defense on the indictment and the charge that Miele bribed a member of the police force.

The defense lawyers said they told the jury in opening statements that Miele never bribed anyone. They also told the judge that the state did not prove the charge contained in the indictment, and changing the indictment would alter the case.

Prosecutors should not be permitted to change the indictment, they said, and they asked the judge to dismiss the case. Hubbard agreed.

"Ordered, that the defendant's motion for judgment of acquittal be and is hereby granted," the judge wrote in a one-page ruling.

Law prevents retrial

Under federal and state law, prosecutors cannot retry Miele for bribery charges, and they cannot appeal Hubbard's ruling. Prosecutors used their evidence against Miele, and introducing the same evidence against her would violate double jeopardy laws.

"She's been tried for the crime that the state misalleged," Iamele said yesterday. "They can't go back now and correct that. The U.S. Constitution and

the Maryland Declaration of Rights prohibits defendants from being tried twice for the same crime."

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