



9th May 2023

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PPS CONFIRMS RETIRED POLICE OFFICER WILL NOT BE PROSECUTED IN CONNECTION WITH 1991 SHOOTING

The Public Prosecution Service (PPS) has taken a decision not to prosecute a former police officer reported in connection with the death of Hugh John Colum Marks in County Down over 30 years ago.

The retired police officer was reported for consideration after an investigation by the Police Ombudsman for Northern Ireland into the shooting of Mr Marks, who was known as Colum, in Downpatrick on 10th April 1991.

The incident investigated happened when officers from the Royal Ulster Constabulary (RUC) were deployed to make arrests following the placement of a mortar device in the driveway of a property that was under police surveillance. Following the deployment, Mr Marks ran through a hedge bordering the address and across a field towards a position from which Officer B had been conducting surveillance. Officer B fired five aimed shots, at least two of which struck Mr Marks and resulted in fatal injuries.

After careful consideration of all the available evidence, it was concluded by the prosecution team that it was insufficient to provide a reasonable prospect of conviction. Prosecutors were assisted in their examination of all issues by advice obtained from independent Senior Counsel.

Explaining the basis for the decision, Deputy Director of Public Prosecutions, Michael Agnew, said: “All decisions as to prosecution are taken by an independent and impartial application of the Test for Prosecution.

“The key issue in this case was whether the available evidence provided a reasonable prospect of rebutting a defence of self-defence. The Officer’s account was that Mr Marks was running towards him and did not stop after warnings. He believed that Mr Marks would have been armed and claimed that he feared for his own life when he made a split-second decision to fire. In a self-defence case the court will assess the reasonableness of a defendant’s actions in light of the circumstances as he may have genuinely believed them to be, even if that belief is a mistaken one.

“The evidence established that Mr Marks was unarmed when he was shot. However, the surrounding circumstances presented significant difficulties in proving to the criminal standard that Officer B did not have a genuine belief that his life was at risk; or that, by firing his weapon in the particular

circumstances that pertained, the amount of force used was unreasonable. These circumstances included the nature of the terrorist operation that was disrupted, the information available to Officer B as a result of his briefing and direct observations at the scene, and the pace with which the relevant events unfolded.”

Providing some further detail in relation to the evidence in the case, Mr Agnew added: “An important aspect of this decision was the consideration of whether the evidence established that Mr Marks was shot in the back. There was some new forensic evidence which suggested that two wounds to the back of Mr Marks may have been entry wounds. However, this evidence was not conclusive and was also inconsistent with examinations of Mr Marks’ body at the time which had identified the relevant wounds as exit wounds. The ability to test and assess that evidence had been greatly diminished due to the passage of time and the unavailability of key expert witnesses. On the available evidence, therefore, there was no reasonable prospect of proving that Officer B fired shots into the back of the deceased.

“Consideration was also given to new evidence which related to a suggestion that Mr Marks may have been walked by police to an unmarked police vehicle, indicating that he was not severely injured at that time. However, the other evidence in the case strongly indicated that it was in fact Officer B, and not Mr Marks, who was seen by this witness; and that Mr Marks was carried from the field to a vehicle at a different location.”

The PPS today met with members of the Marks family and their legal representatives to outline the reasons for the decision in detail.

Mr Agnew added: “I appreciate that this is a disappointing outcome for the family of Colum Marks who have lived for many years with the painful loss of their loved one. The prosecution team has reassured the family that this decision was taken only after a most careful examination of all available evidence and information. We hope that the information provided today and in our detailed letter setting out the reasons for the decision provides some assistance in outlining the circumstances in which their loved one was killed.”

ENDS

NOTES TO EDITORS:

1. All decisions by the PPS are taken strictly in accordance with [the Test for Prosecution](#) which involves two stages. The Test for Prosecution is met if, in relation to an identifiable suspect, the available evidence is sufficient to provide a reasonable prospect of a conviction (the Evidential Test) and if prosecution is in the public interest (the Public Interest Test). The Evidential Test must be passed first before the Public Interest Test is considered. Further information can be found in the [PPS Code for Prosecutors](#).
2. After the original police investigation into the death of Mr Marks, a decision was taken by the then Department of Public Prosecutions in 1993 not to

prosecute Officer B. In 2017, the Office of the Police Ombudsman for Northern Ireland decided to conduct a further investigation into the circumstances surrounding the death of Mr Marks.

3. On completion of the Ombudsman investigation, a file reporting Officer B for consideration was received by the PPS on 10th August 2021.
4. Media queries for the PPS should be referred to the Communications Unit by emailing ppspressoffice@ppsni.gov.uk inside office hours. The out of hours press officer can be contacted on 07920 271804 or 07795 480234.