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Power station activists win appeal over missing police spy's tapes

Court of appeal quashes convictions of 20 eco protesters citing non-disclosure of taped evidence by undercover
Mark Kennedy



Some of the 20 environmental protesters who had convictions quashed by the court of appeal due to withheld evidence by undercover police spy Mark Kennedy. Photograph: Richard Gittins/Champion News

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The convictions of 20 environmental protesters for attempting to shut down a power station were quashed on Tuesday after three court of appeal judges ruled that crucial evidence recorded by police spy **Mark Kennedy** had been withheld.

The lord chief justice, Lord Judge, said that the convictions were "unsafe because of significant non-disclosure" of secret surveillance tapes recorded by Kennedy. He said: "We have reached the clear conclusion that all these appeals against conviction will be allowed."

The campaigners left the high court in London vindicated in their belief that their original convictions had been a miscarriage of justice.

However, police and prosecutors are left facing questions over their conduct in securing the unsafe convictions. Seven inquiries have so far been launched into the prosecution of the campaigners and the infiltration of Kennedy into the ranks of the protest movement.

Two inquiries, one of which is led by a retired court of appeal judge, are scrutinising whether police or the Crown Prosecution Service were responsible for suppressing the vital evidence which cleared the names of the 20 protesters.

The failure to disclose the Kennedy tapes also led in January to the abandonment of the trial of six other campaigners arrested over the same plot.

In all, none of the 114 protesters arrested in a controversial police operation two years ago have been convicted. From the beginning, the £300,000 operation was criticised as it stemmed from the largest number of pre-emptive arrests of political activists in the UK.

It later emerged that the activists had been infiltrated by Kennedy, who had spent seven years undercover in the environmental movement, using the name Mark Stone, sparking claims that his deployment was a waste of public funds.

Acting on intelligence from Kennedy, police burst into a primary school during the night in April 2009 and arrested the activists hours before the planned break-in at Ratcliffe-on Soar power station. Using his fake identity, the spy helped organise the planned protest.

Kennedy was later exposed by environmental campaigners and, growing sympathetic to their cause, revealed that he had covertly recorded the meetings of the activists. He said these tapes would help exonerate them.

On Tuesday, Lord Judge, sitting with Mr Justice Treacy and Mr Justice Calvert-Smith, told the court of appeal: "It is clear that there was a non-disclosure of material which would have been supportive of the defence case advanced at trial."

He identified the tapes and a statement made by Kennedy as the evidence, adding that the Crown Prosecution Service "accepts that the conviction is unsafe". He said he would give an explanation for the ruling this morning. On the steps of the high court afterwards, Mike Schwarz, the lawyer for the activists, said they would make a fuller statement after hearing the judges' reasons. He said the quashing was a "small success in the context of a bigger picture" of the policing of protest.

The 20 activists had been found guilty of conspiracy to commit aggravated trespass in December after a three-week trial at Nottingham crown court. Judge Jonathan Teare gave the activists a range of sentences ranging from 18 months' conditional discharge to 90 hours' unpaid work. Teare told them that they had "acted with the highest possible motives" and were "all decent

men and women with a genuine concern for others and in particular for the survival of planet Earth in something resembling its present form".

During their trial, the 20 activists had admitted that they were going to break into the power station, but argued that they had a "lawful excuse" to do so as they were acting to prevent the greater crimes of death and serious injury caused by climate change. They said they would have stopped the emission of 150,000 tonnes of carbon dioxide. Some police officers are furious that the campaigners have now walked free even after they admitted that they were going to occupy the power station.

At December's trial, the prosecution had said the campaigners were motivated by a desire to get publicity for their cause.

During Tuesday's court of appeal hearing, Matthew Ryder, the campaigners' QC, called on the three judges to carry out a detailed investigation of how and why Kennedy's evidence was suppressed. He said the campaigners were still "in the dark" and had "legitimate concerns" to find out what had happened.

But Lord Judge questioned why it was necessary for the judges to do that, when there were already seven inquiries.

He asked for a full list of the inquiries and their remits.

Following allegations in the *Guardian*, Sir Christopher Rose, a former court of appeal judge, was appointed to examine claims that prosecutors suppressed Kennedy's evidence. His appointment by Keir Starmer, the director of public prosecutions, followed three internal inquiries into the claims by his agency. The investigation into the alleged suppression of the tapes by Nottinghamshire police is being conducted by the Independent [Police Complaints Commission](#).

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