

A 'More Than Peanuts' Sentence Of Food Company Officials

By **Robert Hibbert and Hilary Lewis** (February 6, 2018, 12:47 PM EST)

On Jan. 23, the Eleventh Circuit upheld the longest criminal sentences ever imposed in a food safety case.[1] The court unanimously denied the appeals of former president of the now defunct Peanut Corporation of America (PCA) Stewart Parnell, who was sentenced to 28 years in prison, his brother and peanut broker Michael Parnell, who was sentenced to serve 20 years, and PCA's quality assurance director Mary Wilkerson, who was sentenced to serve five years in prison.

The case arose from a massive salmonella outbreak in 2009 that was traced back to PCA, and which led to an extensive recall of the company's peanut products. More than 700 individuals reported salmonella poisoning that was linked to the outbreak, and there were at least nine deaths. Soon after, in February 2009, PCA ceased all manufacturing and business operations and filed for Chapter 7 bankruptcy. The U.S. Department of Justice brought criminal charges against the Parnell brothers and Wilkerson for their roles in a conspiracy to defraud PCA customers by shipping peanut products before the results of salmonella testing were received and falsifying microbiological test results.

Basis for Criminal Liability in a Food Safety Case

The Federal Food, Drug and Cosmetic Act provides for substantial criminal penalties for "the introduction or delivery for introduction into interstate commerce of any food ... that is adulterated or misbranded." [2] Each misdemeanor violation may result in a sentence of up to one year in prison and fines. [3] Misdemeanor criminal charges may be brought even absent any wrongdoing, negligence and knowledge of either wrongdoing or negligence. If, however, a person engages in adulteration or misbranding with the intent to defraud or mislead, that person would be guilty of a felony, and may be fined and sentenced to up to three years of prison per violation. [4] A single ongoing act may constitute multiple violations, resulting in substantially increased penalties. [5]

In *United States v. Park*, [6] the U.S. Supreme Court considered whether a corporate official who was not directly involved in the conduct at issue could be held criminally liable for violations of the FDCA. In reversing the Fourth Circuit's decision and reinstating the official's conviction, the Supreme Court stated that the FDCA "imposes ... a duty to implement measures that will insure [sic] that violations will not occur" on those individuals "who execute the corporate mission." The "Park Doctrine," as the holding



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has come to be known, permits the prosecution of a responsible corporate official for a violation of the FDCA regardless of the official's knowledge or personal involvement in the violation.

Given the potential breadth of the Park Doctrine, the U.S. Food and Drug Administration has set forth guidelines regarding its analysis of prosecution recommendations.[7] In the guidelines, the FDA acknowledges that, pursuant to the Park Doctrine, a responsible corporate official can be held liable for a first-time misdemeanor "without proof that the corporate official acted with intent or even negligence, and even if such corporate official did not have any actual knowledge of, or participation in, the specific offense." However, the FDA has taken the position that while "[k]nowledge of and actual participation in the violation are not a prerequisite to a misdemeanor prosecution [they] are factors that may be relevant when deciding whether to recommend charging a misdemeanor violation." The guidelines indicate that some individual agency is a factor in determining whether the FDA will recommend to the DOJ that criminal charges be brought.

Stiff Criminal Charges Brought in PCA Case

At the 2014 trial of the Parnell brothers and Wilkerson, the government put on evidence of widespread practices at PCA to avoid or falsify microbiological testing of its peanut products. The lower court found that Stewart and Michael Parnell conspired with PCA senior management to defraud customers regarding the safety of its products, and convicted them of multiple counts of conspiracy, mail and wire fraud, and the sale of misbranded food. Stewart Parnell was additionally convicted of the introduction of adulterated food into interstate commerce. Stewart Parnell and Wilkerson were also convicted of obstruction of justice.

All three defendants appealed on several grounds, primarily relying on juror exposure to extrinsic evidence. Although the jury did not to hear evidence about the nine deaths at the trial, the defendants argued that certain jury members had learned of the deaths outside of the courtroom. The appellate court found that such knowledge was not prejudicial. The appellate court further found that the majority of jurors did not report being exposed to the extrinsic evidence, and the jurors had heard evidence at trial of significant injuries from the outbreak, anyway. Accordingly, the court concluded that "the extrinsic evidence did not influence or contribute to the jury verdict," and the defendants' evidence of guilt was "overwhelming."

The appellate decision is striking insofar as it upholds the most severe criminal sentence in food safety history. Further, in rejecting the extrinsic evidence defense, the court makes it difficult for future defendants in such cases to effectively argue that the type of publicity that often accompanies a major food safety outbreak significantly impairs one's ability to obtain a fair trial. But more broadly, the opinion underlines the abiding significance of the criminal sanction within the food safety landscape. While the type of egregious conduct documented in the PCA litigation can and should be considered an outlier, the human health risks posed by inadequate systems of pathogen control may not be. Companies and individuals unable to affirmatively demonstrate their efforts to address such risks consequently leave themselves vulnerable to a similar fate.

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[1] U.S. v. Parnell, et. al, No. 15-14400 (11th Cir. Jan. 23, 2018); Dept. of Justice, Former Peanut Company President Receives Largest Criminal Sentence in Food Safety Case; Two Others also Sentenced for Their Roles in Salmonella-Tainted Peanut Product Outbreak (Sept. 21, 2015).

[2] 21 U.S.C. §§ 331(a) & 333.

[3] 21 U.S.C. § 333(a)(1).

[4] 21 U.S.C. § 333(a)(2).

[5] See e.g., Robinson v. U.S., 366 F.2d 575 (10th Cir. 1966) (holding that separate sales involving illegal drugs in violation of the FDCA constituted separate counts even though the sales occurred at the same location and close in time).

[6] 421 U.S. 658 (1975).

[7] U.S. Food & Drug Admin., FDA Regulatory Procedures Manual, 6-5 Prosecution, at 6-5-3 <http://www.fda.gov/ICECI/ComplianceManuals/RegulatoryProceduresManual/ucm176738.htm>.