

More Than Peanuts Sentence of Food Company Officials Upheld

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An appellate court recently upheld the convictions of former employees of the now defunct Peanut Corporation of America (PCA),^[1] affirming what is the longest criminal sentence in a food safety case.^[2] Specifically, on January 23 the US Court of Appeals for the Eleventh Circuit unanimously denied the appeals of former PCA president Stewart Parnell, who was sentenced to serve 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 5 years.^[3]

In 2009, the peanut processing company was identified as the source of a massive salmonella outbreak in the United States, which led to an extensive recall. More than 700 individuals were reported to have salmonella poisoning that was linked to the outbreak, and there were at least nine deaths. On February 13, 2009, PCA ceased all manufacturing and business operations, and filed for Chapter 7 bankruptcy liquidation.

At the ensuing 2014 trial, the government put on evidence that the company had retested product that had tested positive for salmonella until they obtained a negative result. There was also evidence that product was shipped before its salmonella test results were received, and some product was shipped after receiving positive test results. The government also argued that the Parnell brothers and Wilkerson knew of positive salmonella test results before the salmonella outbreak and were not forthcoming about that knowledge during the federal investigation.

The lower court found that Stewart and Michael Parnell had 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, seeming to mostly rely on juror exposure to extrinsic evidence. Although the jury was not supposed to hear evidence about the nine deaths, the defendants argued that certain jury members had learned of the deaths outside of the courtroom. The appellate court agreed that several jurors were aware the salmonella outbreak had caused some

deaths, but found their knowledge was not prejudicial because the information they had was too vague, e.g., they had overheard pieces of news reports or passing comments or had faint memories about the incident. 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. 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.

[1] *United States v. Parnell, et. al*, No. 15-14400 (11th Cir. Jan. 23, 2018).

[2] US Dep’t 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).

[3] *Supra* note 1.

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National Law Review, Volume VIII, Number 38

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