

**FILED**

JUL - 3 2012

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

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UNITED STATES OF AMERICA )  
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 v. )  
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 )  
 WILLIAM R. CLEMENS, )  
 )  
 Defendant. )

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Criminal Action No. 10-223 (RBW)

**ORDER**

This matter came before the Court on the Defendant’s Motion and Memorandum of Law to Award Fees and Costs Associated with Mistrial (“Def.’s Mot.”), which was opposed by the government, see Government’s Opposition to Defendant’s Motion for the Award of Fees and Costs Associated with Mistrial (“Gov’t Opp’n”). For the reasons stated in open court and those that follow, the motion is denied.

The defendant seeks “an award of fees and costs that he incurred in preparation for and during his [first] trial, which ended on July 14, 2011, when the Court declared a mistrial,”<sup>1</sup> Def.’s Mot. at 1, arguing such an award is consistent with the Court’s inherent powers “to sanction conduct that abuses the judicial process,” id. at 3. The government maintains, however, that such an award is barred by sovereign immunity. Gov’t Opp’n at 1. Because it finds that the government’s misconduct was not so severe as to warrant financial sanctions, the Court need not resolve the question of whether it possesses the authority to grant the defendant’s motion and

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<sup>1</sup> Jury selection in the defendant’s first trial commenced on July 6, 2011. The trial was aborted when, on July 14, 2011, the defendant moved for and the Court granted a mistrial after the government showed a video clip to the jury containing references to evidence that the Court had previously ruled inadmissible. After concluding that the Double Jeopardy Clause did not bar retrial, the defendant’s second trial began on April 16, 2012. On June 18, 2012, the jury returned not guilty verdicts on all six of the counts of the indictment.

order the government to compensate the defendant for the expenses he incurred in preparation for his first trial


“Courts are . . . instructed, in choosing a sanction, to consider whether the misconduct was purposeful or inadvertent.” Estate of Wallace v. City of Los Angeles, 229 F.R.D. 163, 165 (C.D. Cal. 2005). And, as this Court explained in connection with its denial of the defendant’s motion to dismiss:

the Court now finds that the defendant has failed to establish that Assistant United States Attorney Steven J. Durham intentionally violated the Court’s pretrial ruling. The Court makes this finding because it credits the representations made by Mr. Durham during the September 2, 2011 hearing. . . . [T]he Court accepts his representations that a mistake, not intentional disregard, caused the introduction and publication of the inadmissible evidence.

United States v. Clemens, 10-cr-223 (RBW), Order at 1-2 (D.D.C. Sept. 7, 2011). Accordingly, it is hereby

**ORDERED** that the Defendant’s Motion and Memorandum of Law to Award Fees and Costs Associated with Mistrial is **DENIED**.

**SO ORDERED** this 2<sup>nd</sup> day of July, 2012.

  
REGGIE B. WALTON  
United States District Judge