



Rittenhouse Lawyers To Ask For Mistrial Over Withheld Evidence; Jury Ends Day With No Verdict

Description

Update (1800ET): After deliberating for roughly 7.5 hours on Wednesday, the 12 jurors in the Kyle Rittenhouse trial concluded their second day without reaching a verdict, and are expected to resume deliberations at 10 a.m. ET Thursday.



Kyle Rittenhouse, left, looks over to his attorneys Corey Chirafisi, center, and Mark Richards after getting off the witness stand during his trial at the Kenosha County Courthouse in Kenosha, Wis., on Nov. 10, 2021. (Sean Krajacic-Pool/Getty Images)

Late in the day, Rittenhouse attorney Corey Chirafisi told Judge Bruce Schroeder that the defense will

ask for a **mistrial without prejudice** over a dispute regarding a high-definition drone video they didn't have access to until the trial was complete.

As [*Jack Phillips of the Epoch Times*](#) notes:

If a mistrial without prejudice is declared by the judge, the state would be able to retry the case. Rittenhouse, if convicted of the most serious charge, faces a mandatory life sentence in the shooting deaths of two individuals on the night of Aug. 25, 2020.

Earlier this week, his lawyers originally motioned for a mistrial with prejudice because the "prosecution gave the defense a compressed version of the video," which "was not as clear as the video kept by the state." They also raised other issues in their motion, including prosecutor Thomas Binger's line of questioning of Rittenhouse last week that, according to the defense, violated his Fifth Amendment right to remain silent.

Rittenhouse's lawyers further said they were handed a drone-captured video **that "was only 3.6 megabytes, while the state had a higher resolution version that was 11.2 megabytes."**

During Wednesday's court proceeding, district attorney James Kraus said the difference in videos was due to a technological error. The video, he argued, was compressed because it was transferred from an iPhone to an Android smartphone.

Because of the glitch, the state can't be held responsible for "something that happened in the transfer that we had no knowledge of," Kraus argued. "We didn't compress anything; we didn't change anything," he told the judge.

But lawyer Corey Chirafisi said that **the defense "didn't have the quality of evidence that the state had until the case had been closed."**

And "to not get that until the evidence has been closed, that doesn't strike me as fair," he told the judge, pointing out that "this is a potential life sentence here."

Another defense attorney, Natalie Wisco, said that the video she was sent had a different file name than the original one. The prosecution wasn't telling the truth, she said, which was disputed by Kraus.

Following the back-and-forth arguments, **Schroeder didn't immediately rule on the mistrial motion but indicated may call in an expert to testify under oath** from the attorneys to determine what actually occurred.

The video in question shows Joseph Rosenbaum chasing Rittenhouse in the parking lot of a used-car dealership before the teen turned and opened fire as Rosenbaum approaches him. Prosecutors heavily relied on that video to argue that Rittenhouse provoked the incident that triggered the chain of events.

Members of the jury on Wednesday asked to review the drone video and other videos of both the Rosenbaum shooting and the subsequent shootings of Huber and Grosskreutz. **Schroeder cleared the courtroom for the jurors**, who were to watch the videos on a large screen TV just outside the jury box.

Update (1426ET): The Rittenhouse trial was thrown into chaos on Wednesday, after it emerged that **the prosecution gave the defense a low-resolution version of a drone video** depicting the events of August 25, 2020, resulting in the defense **asking for a mistrial late Tuesday**.

As we noted below, the video provided to the defense was not as clear as the video kept by the state. **The file size of the defense video is 3.6 MB and the state's is 11.2 MB. Further, the dimensions on our video are 480 x 212, the state's, 1920 x 844.**

pic.twitter.com/DmJeUInfBi

— Garold of Riverwood (@OfGarold) [November 17, 2021](#)

After the defense argued that they were given a low-resolution version of the video, it also emerged that the video has a **different creation date, different name, and a much smaller file size**.

Assistant District Attorney John Kraus (aka 'lunchbox') insisted that the resolution issue wasn't intentional.

"If I knew how to compress files, and do all these technology things, I'd have a much better job," claiming that they had not done anything to alter the footage.

The defense countered – saying that the "metadata" on the videos were different, and that an earlier high-res version of the video provided to Tucker Carlson was in black-and-white.

Defense says the filename sent earlier was not similar to the filename given over the weekend. pic.twitter.com/fJbT2CPDbG

— The Post Millennial (@TPostMillennial) [November 17, 2021](#)

It's insane. All the lawyers on Rekieta Law are saying it should be declared a mistrial with prejudice.

— Andrew Ruiz (@then_there_was) [November 17, 2021](#)

Lunchbox: It was her Android, your Honor! I'm an iPhone guy!

Defense: I used a Lenovo laptop to open my Gmail. This had nothing to do with an Android.

— Jacek Posobiec ???? (@JackPosobiec) [November 17, 2021](#)

Unmitigated disaster. ??

ADA Krausse tries to send him self email to see if file name changes before Judge steps in and asks for competent testimony! ?? pic.twitter.com/stEZ8rF2qt

— SCUBA MIKE? (@mescubamike) [November 17, 2021](#)

Judge Bruce Schroeder **has now demanded testimony under oath about the compressed video.**

Binger's face when the judge said he wants to take testimony about the compressed video
pic.twitter.com/pKIJL8dm8s

— Jacek Posobiec ???? (@JackPosobiec) [November 17, 2021](#)

The prosecution claims that **they couldn't 'airdrop' the full sized file to the defense, because the defense attorney has an Android phone, so they emailed it.** They are also claiming that they didn't realize the file size discrepancy until later.

Happening now: The state is explaining they got the drone video via Airdrop.
-They couldn't airdrop to the defense because defense attorney has an Android.
-So state emailed it.
-State says they did not realize the file was not of the same quality until later.
[#KyleRittenhouse](#)

— Kristen Barbaresi (@KristenBarbar) [November 17, 2021](#)

IF THE VIDEO IS RESIZED YOU MUST MISTRY!

— Jacek Posobiec ???? (@JackPosobiec) [November 17, 2021](#)

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Update (1310ET): The jury in the Rittenhouse trial has asked to review video evidence presented during the case, as they undergo a second day of deliberations over the fate of the teen.

In a note sent to Kenosha County Judge Bruce Schroeder, the 12-member jury asked if they can view video in their private room or in the courtroom, according to [Reuters](#). **It's unknown what exactly they are seeking to review.**

Schroeder said he would tell the seven women and five men on the jury they would view the video in the courtroom, which he would clear of public attendees and the media.

Mark Richards, an attorney for Rittenhouse, said he was concerned the jury was asking to see a drone video that was featured by the prosecution during two-weeks of testimony.

The defense has objected to the video, which they say could be manipulated, and it is cited as one factor in their motion for a mistrial, which has not been ruled on by the judge. - Reuters

"I don't know what exhibits the jurors wish to see," said Richards, adding **"We the defense has a real problem with them seeing the drone footage."**

pic.twitter.com/DmJeUInfBi

— Garold of Riverwood (@OfGarold) [November 17, 2021](#)

The 18-year-old Rittenhouse is charged with homicide in the deaths of Anthony Huber, 26, and Joseph Rosenbaum, 36, as well as attempted homicide for wounding Gaige Grosskreutz.

All three men were seen on film pursuing Rittenhouse before he fires his AR-15, bolstering his self-defense argument.

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[Authored by Andrea Widburg via American Thinker](#) (emphasis ours),

During the Kyle Rittenhouse trial, the prosecution argued that Kyle provoked the men who attacked him by waving his gun. To prove this, during the trial, the prosecution gave the defense fuzzy drone footage. There was a great deal of argument about what could be extrapolated from that fuzzy view. It turns out that **the prosecution had within its possession a high-quality video that it played for the judge after the trial ended.** On this, and other evidentiary grounds, **the defense moved for a mistrial with prejudice.**



Defense attorney Mark Richards gives his closing argument on Monday

The [defense motion](#) states the facts with sufficient clarity that I'm going to reprint them here verbatim:

On November 5, 2021, the fifth day of trial on this case, the prosecution turned over to the defense footage of a drone video which captured some of the incident from August 25, 2020. **The problem is, the prosecution gave the defense a compressed version of the video.** What that means is **the video provided to the defense was not as clear as the video kept by the state.** The file size of the defense video is **3.6 MB** and the state's is **11.2 MB**. Further, **the dimensions on our video are 480 x 212, the state's, 1920 x 844.** The video which was in the state's possession, wasn't provided to the defense until after the trial concluded. **During the jury instructions conference, the defense played their version of the video for the court to review.** The state indicated their version was much clearer and had their tech person come into court to have the court review their clearer video. The video is the same; the resolution of that video, however, was not. The state did not provide their quality video to the defense until Saturday, November 13, 2021, and only did so upon specific request by Attorney Wisco — two days before closing arguments and after the evidence had been closed.

Under Wisconsin law, when the defense makes a demand, the prosecution must provide to the defense "[a]ny physical evidence that the district attorney intends to offer in evidence at the trial" and "[a]ny exculpatory evidence." That's Wisconsin Stat. § 971.23(1)(g) & (h). I don't have the time to research the law, but my bet is that if Wisconsin's appellate court ever had before it the question of whether the prosecutor may get away with producing bastardized, degraded versions of the requested evidence, it would say emphatically not.

The motion for a mistrial with prejudice also raises the fact that, when Kyle Rittenhouse took the witness stand, the prosecutors improperly accused him of keeping silent after his arrest. That right, of

course, is enshrined in [the famous Miranda rights](#) warning that all arrestees in America receive: “You have the right to remain silent ...” The corollary to that right is that this silence cannot be used against the defendant in a court of law, but that’s exactly what the prosecution tried to do.



Image: [Thomas Binger](#) (edited in [befunky](#)). YouTube screen grab.

The motion reminds the court that a motion for retrial in Wisconsin can be granted *with prejudice* (i.e., no retrial) if the evidence shows prosecutorial overreach. **To make this showing, the prosecutor’s action must be intentional in that he clearly knew that his acts would be prejudicial to the defendant.** The alleged misconduct must also have been purposefully intended to throw a trial that’s going badly, justifying a mistrial and a second prosecutorial bite at the apple.

Here, the prosecution ignored not just a court order, but the whole principle behind the Miranda warning and could only have acted intentionally when it sprang a video on the defense at the last moment and gave the defense only a poor-quality copy of the original evidence. Both of those things scream intentionality.

As you may recall, the prosecution produced the drone footage at the last minute to support the claim that Kyle was waving his rifle around in a way that would provoke other people to engage in self-defense against him. Thus, they argued, Joseph Rosenbaum, who had been setting fires, tried to burn police as they sat in their patrol cars, swung chains at people, and screamed the N-word, was himself acting in self-defense when he told Kyle earlier that he was going to kill Kyle, and

then raced after Kyle, cornered him in a parking lot, and grabbed for his long gun.

To state the argument is to realize how ridiculous it is. However, it's consistent with the prosecution's other argument on closing, which was that anyone who isn't carrying a gun is not a threat and that the person with a gun should always yield gracefully to a non-gun beating. By contrast, said the prosecution, a gun is inherently a threat. This picture of Reginald Denny, with nothing more, shows how ridiculous the first argument is:

Why did Kyle Rittenhouse need to use a gun? What harm can a violent mob of unarmed people really do? pic.twitter.com/EcY5Pr79Dr

— Matt Walsh (@MattWalshBlog) [November 16, 2021](#)

The second argument vitiates the Second Amendment. If carrying a gun is inherently threatening, then no one ever has a right to defend himself.

As of this writing, the jury spent Monday deliberating without reaching a decision. By the time you read this, the trial may be over. The jury may have found Kyle guilty, in which case the mob gathered outside will celebrate by destroying property. It may have found Kyle innocent, in which case the mob will try once again to burn Kenosha. And the judge may have granted the motion, in which case the mob will also try to burn it all down.

* * *

And in related news...

Holy shlit ??? <https://t.co/05rILwT0Ay>

— Jacek Posobiec ???? (@JackPosobiec) [November 16, 2021](#)

by Tyler Durden

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