Rittenhouse defense requests a mistrial after iPhone Mail app compresses key video evidence

The Kyle Rittenhouse trial in Kenosha, Wisconsin has once again gone off track because of basic technology problems: Rittenhouse's defense attorneys today requested a mistrial because prosecutors sent them a drone video via email, which compressed the video in size. This is after earlier arguments about what pinch-to-zoom does or does not do, and the judge struggling with the screenshot features on his Galaxy S20.

Rittenhouse faces five felony charges for shooting three men and killing two of them last year during a protest in Kenosha. CNN reports the motion for a mistrial is focused on when and how defense attorneys received a copy of a drone video showing the shootings that was shown to the jury in open court.

Rittenhouse's lawyers say they only received a copy of the drone video on November 5th, after the trial started, and that instead of the 11.2MB video possessed by the state, the file they received was just 3.6MB. "What that means is the video provided to the defense was not as clear as the video kept by the state," the motion for mistrial claims.

Prosecutors say they only obtained the video file directly from the drone operator after the trial started – the footage was already public, as it had aired on The Tucker Carlson Show on Fox News within days of the shooting during an appearance by the defendant's first attorney, and a lower-quality version of the video was part of the defense's exhibits.

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The prosecutors said the individual who took the footage came to investigators after the trial had started and transferred a higher-quality version of the video to a detective via AirDrop. The detective brought the video to court, and minutes after his arrival the prosecution told defense attorneys that they had obtained a much better quality version of the video than was previously available. The detective emailed a copy to Rittenhouse’s attorney Natalie Wisco, who uses an Android mobile device, and she transferred that file to the defense’s laptop.

Assistant District Attorney James Kraus told the court that “going from an iPhone to an Android, it appears, somehow compressed the file […] we did not know that this would occur. We gave what we fully believed was the full file to Ms. Wisco […] it came in without objection and was an exhibit for four days, displayed for the jury on full screen.” The prosecution says that they did not know the version she received was of lower quality until just a few days ago when Wisco displayed the file she had received on a defense laptop in court.

The iPhone’s Mail app automatically compresses video files sent as an attachment, and the defense attorney describes getting a renamed .mov file in a format that sounds exactly like an Apple Mail-app compressed video from an iPhone user. The defense was ultimately able to retrieve the full-resolution video file after sending an attorney to collect it on a USB stick.

Wisconsin defense attorney Jessa Nicholson Goetz tells *The Verge* that “it is not normal that video or other electronic evidence is AirDropped to defense counsel in the middle of a trial. That is *highly* atypical.”

According to Goetz, Wisconsin law says that “any evidence that the state intends to use at trial must be disclosed ‘at a

reasonable time before trial,’” and that “a mid-trial AirDrop in no way meets the requirements.” She also notes that prosecutors and courts in Wisconsin routinely handle video evidence. “Many police departments have body cams required, and virtually all squad cars statewide are equipped with video that turns on automatically if the vehicle’s emergency lights are activated. All of those videos are regularly provided via flash drive or CD-ROM/DVD,” says Goetz. “I have never encountered receiving a different or lower quality version of video evidence than the original video.”

As for why the procedures for handling evidence in this case seem so sloppy, Goetz tells *The Verge* that evidentiary rules vary from county to county, with some courts that use online portals to transfer files back and forth, some that require mailed hard copies, and others that require prosecutors to allow defense attorneys to physically retrieve whatever files they need on USB drives.

Rittenhouse’s defense initially requested a mistrial with prejudice, which would have prevented the case from being tried again. It has dropped the “with prejudice” from the request, and so far the judge has not ruled on the motion, even as the jury deliberates and looks at the video. NBC 5 News reports that Kenosha County Circuit Judge Bruce Schroeder says resolving the issue will require testimony from an expert witness.

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