

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0110-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JANE L. AUDEL,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Grant County:
GEORGE S. CURRY, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Jane Auel appeals from a judgment convicting her of manufacturing more than 2500 grams of marijuana, § 161.41(1)(h)3, STATS., based on evidence that she grew it in and around her home. The court entered judgment pursuant to the jury's guilty verdict. The sole issue is whether the trial court should have excluded from evidence a largely inaudible

tape recording. We conclude that the trial court properly allowed the jury to hear the tape, and therefore affirm.

Auel was a tenant in the home of Gary Pope, a large-scale marijuana dealer. Pope obtained at least some of his marijuana from plants started in his home and grown in his yard or nearby.

An acquaintance of Pope's, Dan Schutte, was arrested on drug charges. In exchange for various concessions he visited Auel while wearing a hidden microphone, which transmitted to a police tape recorder. At trial Schutte testified that Auel admitted during their conversation that more than thirty of the marijuana plants growing on the premises were hers. Schutte reported that Auel made a number of other comments indicating that she participated in Pope's enterprise. He also testified to observing her on other occasions tending marijuana plants on the premises.

The State also offered into evidence a tape recording of Schutte's conversation with Auel. The tape was largely inaudible, but did confirm Auel's statement that more than thirty of the plants were hers. The trial court admitted it over Auel's objection of unfair prejudice, because that one statement was both relevant and audible, while nothing else on the tape appeared prejudicial. In her testimony, Auel admitted making the statement about the plants, but asserted that she did so at Pope's request and that it was not true. She denied any other involvement in marijuana growing. Pope supported Auel's story. He testified that he told Auel to say that she grew the plants because Pope was tired of receiving Schutte's horticultural advice. The jury evidently believed Schutte's version and disbelieved Auel and Pope.

The trial court properly admitted the tape. We agree with federal decisions that admissibility of a partially inaudible tape is a matter for the trial court's discretion. *United States v. Camargo*, 908 F.2d 179, 183 (7th Cir. 1990). Auel admitted she made the inculpatory statement heard on the tape. Nothing else on the tape unfairly prejudiced her, and she did not testify nor offer proof that any of the inaudible portions contained exculpatory material. As a result, the trial court reasonably viewed the tape as trustworthy evidence.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.