



241

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed November 22, 1978
vs.	)	
RICK SHANNON, MICHAEL BETTS,	)	654
and TIMOTHY J. MURPHY,	)	61250
	)	61251
Appellants.	)	61252

Appeal from Dubuque District Court - L. John Degnan, Judge.

Defendants appeal convictions of assault with intent to rape claiming error in excluding evidence of victim's previous sexual conduct and the use of marijuana, and admitting testimony of defendants' prior sexual experience. - Affirmed.

Peter J. Klauer, of Klauer, Stapleton, Ernst, Gilloon and McCauley, of Dubuque, for Appellants.

Richard C. Turner, Attorney General of Iowa, J. Susan Carney, Assistant Attorney General, and Robert J. Curnan, Dubuque County Attorney, for Appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendants Rick Shannon, Michael Betts and Timothy Murphy appeal convictions of assault with intent to commit rape in violation of § 698.4, The Code 1977. We affirm.

The defendants were each charged with rape and were tried together. They first contend that trial court erred in sustaining the State's motion in limine which sought to exclude testimony concerning the victim's previous sexual conduct within one year of the assault. Defendants argue that this evidence is admissible under § 782.4, The Code 1977, on the issue of consent. In *State v. Ball*, 262 N.W.2d 278, 280 (Iowa 1978), the court rejected the notion that a victim who has in the past consented to intercourse with one male implies her consent in the case of another male. We affirm the trial court's ruling which excluded this type of evidence.

Next, defendants complain that the motion in limine prevented them from attacking the credibility of the victim and her companion by showing that these witnesses smoked marijuana on the night in question. Their argument is apparently based on the contention that a person under the influence of marijuana is less able to perceive and remember, less inhibited, and more likely to consent to sexual intercourse. Assuming, *arguendo*, the admissibility of such evidence, the record shows that the defendants were allowed to testify that they smoked marijuana, as did the two State's witnesses, on the night of the assault. Thus, the use of drugs was fully established in spite of trial court's sustaining the motion in limine, and no reversible error occurred. See *State v. Clark*, 187 N.W.2d 717, 721 (Iowa 1971). In connection with this point, defendants further maintain that they should have been allowed to impeach the victim and her companion by using the deposition testimony of each woman against the other. In those depositions, the victim stated that her companion smoked marijuana the night of the assault but that she personally did not; the companion's version was that both of them smoked. Defendants argue that the motion in limine prohibited them from using this testimony and thereby denied them effective cross-examination. We find that defendants' attempt to so impeach these two witnesses goes to a collateral matter, and therefore, the motion was properly sustained. See *State v. Fowler*, 248 N.W.2d 511, 520 (Iowa 1976).

Finally, defendants assert trial court erred in allowing the State to examine Shannon and Betts concerning their previous sexual encounters. This inquiry was objected to on the grounds of relevancy. There is some indication in the record that defendants invited the error. On direct examination, Shannon and Betts testified that it was their custom and habit to go out to the place where the assault occurred after the bars in town had closed. This place was known as "Grab-ass" by defendants. They thus implied that there was nothing unusual about this group of people partying together at "Grab-ass" at 3:00 on a Saturday morning. On cross-examination, the prosecutor essentially asked if either of these defendants had ever before been as fortunate as they were on the night of the offense. From the context, it appears that the question was posed in a jesting, offhand manner, and that its purpose was not to impugn defendants' morality. Although we disapprove of this line of questioning, we find no prejudicial error.

AFFIRMED.