IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

S.B.,

Plaintiff,

v. **Case No.: 4:16cv613-MW-CAS**

FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY BOARD OF TRUSTEES,

Defendant.

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ORDER DENYING DEFENDANT'S MOTION TO PRECLUDE THE WORDS "RAPE" AND "SEXUAL ASSAULT" AT TRIAL

Plaintiff, S.B.[1], is suing Florida Agricultural and Mechanical University's Board of Trustees ("FAMU") under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a). FAMU filed a motion to exclude the words "rape" and "sexual assault" at trial pursuant to Federal Rules of Evidence 403 and 701. ECF No. 100. For the reasons discussed below, this Court **DENIES** FAMU's motion.

FAMU argues that the words "rape" and "sexual assault" should be precluded at trial for two main reasons: (1) "the terms are unfairly prejudicial to FAMU and its ability to contest disputed fact[s]" and (2) "'rape' and 'sexual

[1] This Order refers to Plaintiff by her initials to protect her identity. This Court has already ruled that Plaintiff may proceed anonymously. ECF No. 77.

assault' are legally defined terms that Plaintiff cannot provide an opinion about as a lay witness." ECF No. 100, at 6.

Considering FAMU's first reason, FAMU is concerned that the words "rape" and "sexual assault" indicate that Plaintiff's alleged perpetrators were convicted of crimes or committed intentional torts. ECF No. 100, at 7. FAMU is further concerned that using the words "rape" or "sexual assault" at trial will "negatively affect FAMU's ability to present countervailing evidence at trial and to question Plaintiff about the veracity of her claims on cross examination." ECF No. 100, at 7. This Court disagrees with FAMU. During trial FAMU is free to explain to the jury that none of the alleged perpetrators were convicted of crimes or sued for tort damages.

Considering FAMU's second reason, this Court is at a loss to understand precisely what FAMU means by stating "Plaintiff may not provide opinion testimony at trial about whether the three incidents constitute 'rape' or 'sexual assault' because she does not have the specialized knowledge to make legal conclusions[;] . . . Under Rule 701, lay witnesses are prohibited from offering testimony 'based on scientific, technical, or other specialized knowledge.'" ECF No. 100, at 8. To be sure, one need not be an "expert" to determine whether he/she was a victim of a sex crime. If Plaintiff believes she was sexually assaulted, she is free to testify that she was, and her counsel and witnesses could rely on such

testimony when presenting her case. This Court cannot imagine how Plaintiff would present her case if she was prevented from using the words “sexual assault” or “rape,” given those allegations are central to this entire dispute.

This Court is not convinced with FAMU’s reliance on *Ojeda v. Louisville Ladder Inc.*, 410 F. App’x 213, 214 (11th Cir. 2010). There, the plaintiff, who was also a handyman, was injured on a step ladder and provided *only* his affidavit opining that the ladder was defective as evidence. *Id.* at 214-15. Based on that, the district court granted summary judgment to the ladder manufacturer, and the Eleventh Circuit affirmed. *Id.* at 216. Permitting Plaintiff to use the words “rape” and “sexual assault” at trial has no correlation to a case that granted summary judgment to a manufacturer due to lack of evidence.

Both parties have used the words “rape” and “sexual assault” throughout the entire litigation. The parties are free to continue doing so at trial.

Accordingly, FAMU’s motion to preclude the words “rape” and “sexual assault” at trail, ECF No. 100, is **DENIED**.

SO ORDERED on March 27, 2019.

s/Mark E. Walker
Chief United States District Judge