No.

IN THE

Supreme Court of the United States

ERIN JONES,

Petitioner,

v.

THE CITY OF NEW YORK

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

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I. Questions Presented

Has the Petitioner ever been classified as "unable to perform the duties of her position" by any physician?

Why was Petitioner Jones' employment termination deemed legitimate by the District and Appellate courts as per Civil Service Law Section 73 despite the fact that she physically appeared for duty and medical clearances on: July 18, 2016, August 9, 2016, August 23, 2016 and November 16, 2016? This is clearly contradicted by Civil Service Law Section §73 which cites:

> "When an employee has been continuously absent from and unable to perform the duties of his position for one year or more by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workmen's compensation law, his employment status may be terminated and his position may be filled by a permanent appointment..."

Why was the District Court able to classify that Petitioner was eligible for termination on the date of her initial attempt to return to duty (7/18/16) for *her* failure to request a reasonable accommodation? Ms. Jones was verified as being fit for duty by several physicians; including the City's own doctors. The return to duty process was a managerial function Plain was not responsible for or possess the authority to conduct.

Why did the District Court Order (dated 1/8/2020), rule that a trial be held based on reasonable accommodation issues from 2016 only; then allow evidence and testimony on matters unrelated to the case? The trial consisted of highly disputed, questionable, outdated disciplinary claims from fourteen (14) years prior.

Why was Petitioner's termination deemed legitimate by both the District and Appellate courts due to *her* failure to request a reasonable accommodation on her initial attempt to return to duty on7/18/16?

Respondent has never raised this claim as a defense in their Answer or at trial.

If Petitioner's termination was documented as non-disciplinary based, why did the District Court determine Ms. Jones' termination as a result of past disciplinar action from nine years prior? . The action directly contradicts the basis for Petitioner's termination to one of a disciplinary nature. Civil Service Law Section 75 provides employee protections against such disciplinary actions and Petitioner was never afforded due process according to law:

"Removal and other disciplinary action. A person described in paragraph (a) or paragraph(b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this

section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section."

Why was Petitioner never afforded the right to due process? These issues were challenged, disputed and adjudicated at an informal conference held five years after the initial allegation. Ms. Jones was not subjected to any pending disciplinary action prior to the onset of her approved year-long sick leave of absence and received a satisfactory evaluation in 2015.

Why was Ms. Jones classified as eligible for reinstatement by the NYC Department of Citywide Administrative Services, but not permitted to return to duty in 2018 ? Civil Service Law Section 81 addresses the procedures associated with this

process, although it was inexplicably was never completed.

Why did the District and Appellate courts fail to address Plaintiff's request for investigation, information, and testimony regarding Ms. Jones' missing/depleted pension funds totaling thousands of dollars from her employment with the City; even though they are included in her original affidavit to the Court in 2017? Petitioner's was denied the right to present a witness at trial with information regarding the missing funds. To date, Petitioner's pension reflects an amount of less than $2,500 after twenty-four years of service. Both the District and Appellate Courts were provided with supportive evidence of dubious pension member numbers, Tier numbers, and listed pension amount totals. Plaintiff has never borrowed from her pension.

Why did both the District and Appellate Courts uphold the repeated violations by the City of New York regarding Ms. Jones' work contract with the City of New York? Respondent's former employer routinely assigned Ms. Jones to tours of duty that she was not mandated to work, causing hardship. Petitioner's 2008 EEOC complaint against the unfair treatment resulted in an involuntary transfer, and false disciplinary allegation allowed at Petitioner's reasonable accommodation trial in 2016. Ms. Jones' title of Secretary 3 was not mandated to work nights, holidays, weekends or overnights with the City of New York.

Why did the City continue to promote and hire employees (some with Petitioner's Secretary title) after declaring to the Court there was a hiring freeze in effect and no availability for reinstatement in 2019 and thereafter? Contradictory testimony and

supportive documentation were provided to the Court substantiating this fact.

Why was Petitioner never reinstated to her position despite her approval from NYC Department of Citywide Administration Services (DCAS)? Civil Service Law 81 dictates that once employee is deemed fit for duty, they are to be returned via a "Preferred List" generated by the City. CSL 81 states:

"Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically

and mentally fit to perform the duties of his former position, he shall be reinstated to his former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field in his former department or agency. If no appropriate vacancy shall exist to which such reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed on a preferred list for his former position in his former department or agency, and he shall be eligible for reinstatement in his former department or agency from such preferred list for a period of four years."

Was a reasonable accommodation necessary if the Petitioner's normal daytime working hours for her title were already documented in her medical letter? Petitioner's medical documentation supported her ability to work the standard seven (7) hour daytime work tour for her Secretary title. Petitioner was

instructed to complete an application for a reasonable accommodation two months after her initial attempt to return to duty. The District Court, however, determined that because Plaintiff failed to request a reasonable accommodation at the onset of her initial attempt to return to work (7/18/16), that she became eligible for termination.

What evidence was presented to the Court where the Petitioner was ever deemed unable to perform the duties of her Secretary Level 3 position? Petitioner was never classified with an inability to perform or considered unable to work with or without a reasonable accommodation by anyone.

When and where was Petitioner ever assigned a working tour of duty effective July 18, 2016 (initial attempt to return to duty)? Petitioner was never officially returned to duty despite multiple physical

appearances at several offices in compliance with employer's directives. No notification was ever issued to Petitioner claiming her medical documentation lacked information.

Why wasn't Respondent able to produce evidence of their written correspondence to the Petitioner instructing her to physically appear for work following her EEOC filing in December 2016? Respondent initially informed the Court that they were able to produce proof of these written notifications, however, failed to do so.

Why has Respondent produced a viable reason for failing to return Ms. Jones to duty despite being in possession of verifiable medical documentation?

Why was the Respondent unable to process Ms. Jones' reasonable accommodation application within the thirty (30) day time period? Petitioner's return

to duty process was took a total of nine (9) months resulting in her termination where CSL Section 73 was wrongfully applied. Respondent maintained that a letter was sent to Plaintiff yet it was never received. Respondent can produce no evidence of its existence. Ms. Jones has always maintained that she never received any such documentation.

Why did Respondent fail to issue any written correspondence to Petitioner informing her of an expected return to duty date and time?

Respondent has never produced written notification to Petitioner of an assigned date to return to work following her EEOC complaint in December 2016.

Why wasn't Petitioner allowed a seniority transfer to a closer work location after twenty-four (24) years of service? Petitioner's was entitled via union rights to a transfer to a closer work location based on her

seniority after twenty-four (24) years of service and a medical hardship.

Why was it necessary to delay Petitioner's return to duty by nine (9) months despite receiving multiple written medical clearances by several physicians?

Why did the District and Appellate Courts fail to acknowledge that Petitioner was subjected to highly abnormal procedures that were not associated with the regular Reasonable Accommodation process?

Why wasn't Petitioner subjected to disciplinary measures by the City if she was in non-compliance in 2016?

Why did Respondent only subject Ms. Jones to termination after her EEOC filing? The United States Court of Appeals Second Judicial Circuit's Summary Order outlines that Plaintiff failed to offer

any evidence that "the City's proffered reason for terminating her was pretextual and discriminatory." Respondent was aware of Plaintiff's EEOC filing in December 2016 and responded by stating Plaintiff refused to work her tour hours - without any record of a Reasonable Accommodation being granted to Ms. Jones. Petitioner was not subjected to any disciplinary action either during her sick leave of absence, upon her initial attempt to return to duty, or prior to her EEOC filing in December 2016.

On the issue of retaliation, why did the District and Appellate Courts fail to acknowledge Ms. Jones' evidence (which presently exists in her employment record) containing misleading and false information regarding non-existent arrest(s)? This information became evident during the exchange of parties' court documents, is highly unfair and has negatively

impacted Petitioner's ability to gain employment following her termination.

Why did Respondent continue to request medical information from Petitioner even after the Reasonable Accommodation had allegedly been granted to her?

What information was still necessary for the Respondent to continually drag out the return to duty process for Ms. Jones?

Why was medical detailed medical information being sought by Respondent, if the Reasonable Accommodation form did not require said "additional" information?

Why did the Respondent neglect to request the "additional" information in writing from the Petitioner?

Why was Petitioner not subjected to disciplinary charges for failure to comply and/or return to duty until after her 2016 EEOC filing?

1- Table of Contents

2- Table of Authorities

Cases

Statutes

Constitutional Provisions

3- Petition for Writ Of Certiorari

Erin Jones, Pro Se litigant, respectfully petitions this court for a Writ Of Certiorari to review the judgment of the United States Supreme Court of Appeals Second Judicial Circuit and Southern District of New York (SDNY) .

4- Opinions Below

The decision by the United States Supreme Court of Appeals Second Judicial Circuit denying Ms. Jones' appeal is reported as February 22, 2024. That Order and Justice Raggi's dissent is attached at Appendix.

5- **Jurisdiction**

Ms. Jones' petition for appeal to the United States Court of Appeals Second Judicial Circuit was denied on February 22, 2024. Ms. Jones invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this petition for a Writ Of Certiorari within ninety days of the United States Supreme Court of Appeals Second Judicial Circuit's judgment.

Statement of the Case

Petitioner filed her lawsuit following her termination by the City of New York in May 2017 as a result of filing an Equal Opportunity Commission complaint in December 2016. Petitioner, previously diagnosed with a cardiac and respiratory condition, was repeatedly deemed fit for duty by multiple physicians; yet never allowed to return to her position following a year-long sick leave absence.

Although Petitioner repeatedly and physically appeared in compliance with her employer's directives; she was repeatedly sent home without written notification or adequate reason. Despite appearing with sufficient medical documentation verifying her ability to work the standard tour hours of duty for her Secretary 3 title, Petitioner was instructed to complete a Reasonable Accommodation application in order to complete the return process. Although the reasonable accommodation process is mandated to be completed within 30 days with notifications in writing to the employee, the City of New York deviated from its normal, standard practices and neglected to process Ms. Jones resulting in her termination. Petitioner was never issued a time or date to return to duty at any time (verbally or written), issued a work location, or sent written notification of her status. Despite Ms. Jones'

continual compliance with her employer's directives, the City of New York ultimately terminated Ms. Jones' employment in May 2017 (nine months later) while improperly asserting Civil Service Law Section 73 as the basis for this action. Respondent participated in discriminatory conduct and refused to return to duty and reinstate Ms. Jones, respectively. Respondent acted with reckless indifference by neglecting to follow its own procedures and improperly ending Plaintiff's employment with the City.

6- REASONS FOR GRANTING THE WRIT

In McMillan v. City of New York (11-3932) (2012), the United States Court of Appeals for the Second Circuit determined that the US District Court for the Southern District of New York's motion for summary judgment was erroneous and its

dismissal premature. Its decision was vacated and remanded for further proceedings with regards to disability discrimination law.

In Pesce v. The City of New York (2012-cv-08663) SDNY, a city employee/officer sued based on disability discrimination and EEOC complaint findings with the Southern District Court of New York (SDNY). The outcome was reinstatement to his position and back pay following trial on the issues.

The Court of Appeals accepted the trial court's findings that Ms. Jones was granted an approval for a reasonable accommodation; but admitted to being unsure if she actually received it. Respondent compounded the lack of communication by admitting via court testimony that Ms. Jones was not issued

any written notifications regarding either a scheduled return to duty date for work or her reasonable accommodation status. Respondent's actions seem indicative of reckless disregard for standard operating procedure without explanation. Respondent's *internal* written communications were never relayed to Ms. Jones regarding her status and the return to duty process was never completed.

Petitioner requests that this Court review the District Court and Appellate Court's retaliation conclusions. Respondent continues to retain false arrest information in Petitioner's employment record. Despite clear and convincing evidence on record that the City of New York's actions appeared to violate Ms. Jones, the Court of Appeals proceeded with its determination without any disputable evidence that the City's actions were correct. Ms. Jones' employee rights were persistently violated

prior to and after her termination; especially during the reinstatement process. Respondent abandoned the entire reinstatement process without ever proving Ms. Jones' ineligibility to perform her duties.

The Court of Appeals' erroneous decision circumvents this premise, effectively permitting the City of New York the right to repeatedly violate Civil Service Law. Ms. Jones complied with every directive issued by her former employer and was able to prove her ability to work with or without a reasonable accommodation at all times. Petitioner's inability to return to her position as Secretary was due to reckless indifference for proper procedure by the City regarding both the reasonable accommodation and return to duty process. As an employee and not an administrative manager, Petitioner's responsibility did not include the authorization to issue return to work dates to herself

or any other managerial function. The City's actions seem indicative of negligent, inconsistent, and reckless mismanagement and was the cause that led to Ms. Jones' ultimate termination. The Summary Order issued by the court highlights the inconsistencies conducted by Respondent; including testimony given by both Sgt. Rebecca Mayo and Lisa Atkinson. Each trial witness admitted through testimony their failure to follow standard operating procedures with regard to Ms. Jones' attempt to return to work in 2016 and the reasonable accommodation process. Finally, the Summary Order from the Courts references the time period between Ms. Jones EEOC complaint in 2016 and subsequent termination five months later as not being sufficient enough for "causation". *See Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 110 (2d Cir. 2010) (noting that the Second Circuit "has

not drawn a bright line defining, for the purposes of a prima facie case, the outer limits beyond which a temporal relationship is too attenuated to establish causation," and has noted that it has held that "five months is not too long to find the causal relationship"). Ms. Jones' history of one prior EEOC complaint in 2008 against a supervisor led to her involuntary transfer to a mandatory overtime location where she was the only Secretary and subjected to non-mandated tours of duty despite her medical hardships indicating pretextual conduct. Respondent's failure to restore Ms. Jones to her position severely limited her ability to obtain union assistance on any employment matter. *See Vanacore v. City of N.Y.*, 2014 Slip Op. 31626.

7- CONCLUSION

For the foregoing reasons, Mr. Adams respectfully requests that this Court issue a writ of certiorari to review the judgment of the Alaska Court of Appeals.

DATED this 22 day of May, 2024.

Respectfully submitted,

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APPENDIX

CERTIFICATE OF COMPLIANCE

No.

ERIN JONES,

Petitioner

v.

CITY OF NEW YORK,

Respondent

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2,886 words excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/22, 2024

MANDATE ISSUED ON 2-22-2024

22-1867-pr

Jones v. City of New York

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC

DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of September, two thousand twenty-three.

PRESENT:

REENA RAGGI,

RAYMOND J. LOHIER, JR.,

SUSAN L. CARNEY,

Circuit Judges,

Erin Jones,

*Plaintiff-Appellant,*22-1867

v.

The City of New York,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:

Erin Jones, *pro se*, Ozone Park, NY.

FOR DEFENDANT-APPELLEE:

Deborah A. Brenner, Karin Wolfe, Assistant Corporation Counsel, *for* Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Analisa Torres, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Appellant Erin Jones sued her former employer, the City of New York (the City), under the Americans with Disabilities Act (ADA), the New York State Human Rights Law (NYSHRL), and the New York City Human Rights Law (NYCHRL), alleging failure to accommodate her disability, discrimination based on that disability, and retaliation based on her request for an accommodation. Jones, who worked as a secretary with the New York City Police Department (NYPD), alleged that she was denied a reasonable accommodation for her respiratory and cardiac conditions, fired because of her disability, and retaliated against for filing a charge with the Equal

Employment Opportunity Commission (EEOC). The District Court granted partial summary judgment to the City on the discrimination and retaliation claims, but determined that triable issues of fact existed with respect to her failure to accommodate claim. After trial, at which Jones was represented by pro bono counsel, the jury returned a verdict in favor of the City. The District Court entered judgment on July 27, 2022. Jones appeals pro se, challenging both the summary judgment decision and purported errors committed by the District Court at trial. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

I. Summary Judgment

We review a grant of summary judgment de novo, "resolv[ing] all ambiguities and draw[ing] all inferences against the moving party." *Garcia v. Hartford Police Dep't*, 706 F.3d 120, 126-27 (2d Cir. 2013). "Summary judgment is proper only when, construing the evidence in the light most favorable to the non-movant, 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Doninger v. Niehoff*, 642 F.3d 334, 344 (2d Cir. 2011) (quoting Fed. R. Civ. P. 56(a)).

A. Disparate Treatment

The District Court properly granted summary judgment in favor of the City on Jones's disparate treatment claims. Claims alleging disparate treatment under the ADA, NYSHRL, and NYCHRL

are analyzed under the familiar *McDonnell Douglas* burden-shifting framework.1 *See Ferraro v. Kellwood Co*, 440 F.3d 96, 99 (2d Cir. 2006). This standard first requires the plaintiff to "establish a prima facie case of discrimination." *Fox v. Costco Wholesale Corp.*, 918 F.3d 65, 71 (2d Cir. 2019). To make a prima facie case of discrimination, the plaintiff must show that: (1) her employer is subject to the relevant federal, state, or local law, (2) she is disabled within the meaning of those laws, (3) she is otherwise qualified to perform the essential functions of her job with or without a reasonable accommodation, and (4) she suffered an adverse employment action because of her disability. Id.; see *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802-04 (1973). Once the plaintiff establishes a prima facie case, the employer must demonstrate a legitimate, non-discriminatory reason for the adverse employment decision. *Fox,*

918 F.3d at 71. If the employer meets this burden, the plaintiff must demonstrate that the employer's proffered reason is a pretext and that the real reason is discriminatory. *Id.* If the plaintiff fails to do so, the employer is entitled to summary judgment. *See James v. N.Y. Racing Ass'n,* 233 F.3d 149, 154 (2d Cir. 2000).

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1 "[C]ourts must analyze NYCHRL claims separately and independently from any federal and state law claims, construing the NYCHRL's provisions broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 109 (2d Cir. 2013) (quotation marks and citations omitted). Accordingly, NYCHRL claims "must be analyzed under both the familiar framework of *McDonnell Douglas*... and under the newer mixed motive framework, which imposes a lesser burden on a plaintiff opposing such a motion." *Bilitch v. New York City Health & Hosps. Corp.,* 148 N.Y.S.3d 238, 244 (2d Dep't 2021) (quotation marks and citations omitted).

Even assuming Jones established a prima facie case of disability discrimination, the City proffered a legitimate, nondiscriminatory reason for her termination. New York Civil Service Law § 73 "governs separations and reinstatements of employees who are disabled by other than an occupational disease or injury." *Duncan v. N.Y. Dev. Ctr.*, 63 N.Y.2d 128, 134 (1984); *see* N.Y. Civ. Serv. Law § 73. The statute provides that "[w]hen an employee has been continuously absent from and unable to perform the duties of h[er] position for one year or more by reason of a disability,... h[er] employment status may be terminated and h[er] position may be filled by a permanent appointment."). According to the City, Jones was fired under § 73 because she failed to resume her duties as a secretary for more than one year. Jones took a leave of absence in July 2015 and was scheduled to return in July 2016 but never did so. The City thus proffered a legitimate, non-discriminatory reason for terminating Jones in compliance with § 73.

Jones responds that she was able to perform the functions of her job as required under § 73 and that she should not have been faulted for failing to return to work within a year. But Jones failed to offer any evidence that the City's proffered reason for terminating her was pretextual and discriminatory. We therefore affirm the District Court's grant of

summary judgment in favor of the City on Jones's claims that she was terminated in violation of the ADA, NYSHRL, and NYCHRL.

B. Retaliation

The District Court also properly granted summary judgment to the City on Jones's retaliation claims. A claim of retaliation under the ADA requires an employee to "show that [s]he engaged in a protected activity, that [s]he suffered an adverse employment action, and that a causal connection exists between that protected activity and the adverse employment action." *Fox,* 918 F.3d at 72-73. "The burden-shifting framework under *McDonnell Douglas* also applies to retaliation claims under both the ADA and the NYSHRL." *Tafolla v. Heilig,* No.

21-2327, F.4th 2023 WL 5313520, at *10 (2d Cir. Aug. 18, 2023).

We agree with the District Court that Jones failed to adduce sufficient evidence establishing that retaliation was the but-for cause of the denial of her request for a reasonable accommodation or her termination. See Tafolla, 2023 WL 5313520, at *10. Jones argues that the short period of time between her December 2016 EEOC charge and the January 2017 revocation of her temporary accommodation and the May 2017 termination is sufficient, at this stage, to establish causation. But the May 2017 termination occurred more than four months after Jones filed her EEOC charge. This time period does not, by itself, demonstrate a causal relationship between Jones's protected activity and the adverse employment actions of which she complains. *See Clark Cnty. Sch. Dist. v. Breeden,* 532 U.S. 268, 273-

74 (2001) (noting that time periods greater than three months can be insufficient to establish causal relationship). Jones does not point to any other evidence in the record that demonstrates that the City revoked her accommodation or terminated her for retaliatory reasons, as would be required to prevail on her claim. *See El Sayed v. Hilton Hotels Corp.*, 627 F.3d 931, 933 (2d Cir. 2010) ("The temporal proximity of events may give rise to an inference of retaliation for the purposes of establishing a prima facie case... but without more, such temporal proximity is insufficient to satisfy appellant's burden to bring forward some evidence of pretext.").

As noted above, claims under the NYCHRL must be analyzed separately. *Mihalik v. Credit Agricole Cheuvreux N. Am. Inc.*, 715 F.3d 102, 109 (2d Cir. 2013). Although the District Court did not

separately analyze Jones's NYCHRL retaliation claim, we conclude that it did not err in granting summary judgment to the City on that claim because, as discussed above, Jones failed to offer *any* evidence of a retaliatory motive.

II. Trial

A. Sufficiency of the Evidence

We likewise reject Jones's challenge to the sufficiency of the evidence at trial. "[A] party must raise a sufficiency-of-the-evidence claim in a post-trial motion to preserve it for appeal." *Dupree v. Younger*, 598 U.S. 729, 734 (2023). Because Jones never filed such a motion before the District Court, we will not review her challenge on appeal.

Even if she had preserved this issue, however, she would not be entitled to relief from judgment because the record reveals that the jury's verdict was supported by sufficient evidence. *See Highland Cap. Mgmt. LP v. Schneider, 607* F.3d 322, 326 (2d Cir. 2010). At trial, Sergeant Mayo and Staff Analyst Atkinson testified that Jones was granted, on a temporary basis, the accommodations she had requested and that these accommodations would have been extended if she had returned to work and submitted additional information about her medical condition. In light of this evidence, which we must assume the jury credited, the jury reasonably found that the City offered Jones a reasonable accommodation.

B. Evidentiary Rulings

Finally, Jones challenges the District Court's admission of certain evidence. We review the District Court's evidentiary rulings at trial for abuse of discretion and will reverse only for manifest error. *Cameron v. City of New York, 598 F.3d 50, 61* (2d Cir. 2010). We find no such error here. In particular, the District Court properly admitted communication reports introduced through witness Sergeant Rebecca Mayo, whose testimony laid a proper foundation for admitting the reports as business records. *Ret. Plan of UNITE HERE Nat. Ret. Fund v. Kombassan Holding A.S., 629 F.3d 282, 289* (2d Cir. 2010) (quotation marks omitted) (A "custodian or other qualified witness must testify that the document was kept in the course of a regularly conducted business activity and also that it was the regular practice of that business activity to make the record."). Sergeant Mayo was not further required to

show that the business records were on official letterhead with supervisory signatures or agency timestamps, or were authorized by the NYPD Police Commissioner. Nor did the District Court err by permitting testimony related to Jones's request for an accommodation in 2014, even though the District Court had concluded that Jones's claim relating to that request was time barred. Jones's counsel did not object to this testimony and, in any event, conduct that falls outside the statute of limitations can be referenced as "background evidence" relating to a "timely claim." *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

* * *

We have considered Jones's remaining arguments and conclude that they are without merit.

For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13 day of February, two thousand twenty-four.

Erin Jones,

Plaintiff - Appellant,

V.

ORDER

The City of New York,

Docket No: 22-1867

Defendant - Appellee.

Appellant, Erin Jones, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk