

No. 24-562

---

---

IN THE  
**Supreme Court of the United States**

---

NARJES MODARRESI,  
*Petitioner,*

vs.

THE STATE OF TEXAS,  
*Respondent.*

---

On Petition for Writ of Certiorari to the  
Texas Court of Criminal Appeals

---

**RESPONDENT'S APPENDICES**

---

KEN PAXTON  
Attorney General of Texas

TOMEET M. HEINING  
Chief, Criminal Appeals  
Division

BRENT WEBSTER  
First Assistant Attorney  
General

LORI BRODBECK  
Assistant Attorney  
General

JOSH RENO  
Deputy Attorney  
General for Criminal  
Justice

*Counsel of Record*  
OFFICE OF THE ATTORNEY  
GENERAL OF TEXAS  
P.O. Box 12548  
Austin, Texas 78711

---

---

*Counsel for Respondent*

## **TABLE OF CONTENTS**

Excerpts from Petitioner's State Habeas Evidentiary Hearing .....	Appendix A
Excerpts from the Reporter's Record for Petitioner's Trial .....	Appendix B
Petitioner's Article 11.07 State Habeas Application .....	Appendix C

**Respondent's Appendix A**  
**(Excerpts from Petitioner's State Habeas**  
**Evidentiary Hearing)**

Resp't App. 1a

CAUSE NO. 1260243-A  
VOLUME 1 OF 1 VOLUME

RECEIVED  
COURT OF CRIMINAL APPEALS  
3/28/2024  
DEANA WILLIAMSON, CLERK

EX PARTE           §     IN THE DISTRICT COURT OF  
                      §  
NARJES            §     HARRIS COUNTY, TEXAS  
                     §  
MODARRESI       §     339TH JUDICIAL DISTRICT

EVIDENTIARY HEARING

November 10, 2022

Michelle Tucker  
Official Court Reporter  
339th District Court  
Harris County, Texas

Proceedings reported by: Machine Shorthand

Resp't App. 2a

[Page 29]

Q. So, at the time you received Applicant's Exhibit 10 you had been practicing law for 50 years. Do you need to go to another lawyer to tell you whether you should answer a question?

A. I don't know if I asked him specifically about answering the question. I remember talking to Wendell about the fact situation.

Q. Okay. Were y'all trying to come up to some response?

A. Sir?

Q. Were you and Mr. Odom trying to come up with a response to my e-mail?

A. I don't recall that.

Q. Let me—

MR. SCHAFFER: Approach, please?

Q. (By Mr. Schaffer) I'm showing you Applicant's Exhibit 11 and ask if you can identify that as your response to Applicant's Exhibit 10?

A. I see on No. 11 is a paragraph—

Q. Well, if you would please, sir. All I'm asking is, is that the response you gave to me; is that an e-mail from you to me?

A. I would assume, yes.

Resp't App. 3a

MR. SCHAFFER: Offer Applicant's 11, Your Honor.

[Page 30]

MS. ROCHE: No objection.

THE COURT: Applicant's 11 is admitted without objection and may be published.

Q. (By Mr. Schaffer) And would you read to the Court the response you gave me in response to my e-mail asking why didn't you object to the confession.

A. Yes. Mainly, because it would show that the insanity defense in this case, not filing a motion to suppress was part of our sound trial strategy.

Q. What I want to know first of all is, what did you review to refresh your memory before you sent me that e-mail?

A. I don't recall.

Q. Who did you talk to before you sent me that e-mail?

A. I don't recall that. Probably Mr. Odom, but—

Q. Did you talk to Dee McWilliams about what response to make?

A. I don't recall that specifically.

Q. And was your e-mail to me, was your response in Applicant's Exhibit 11 a truthful response?

A. At that time I believed that to be correct.

Q. Okay. So, what you're telling—

Resp't App. 4a

A. I would not send you something that is not—that's a lie, you know.

[PAGE 31]

Q. Okay. So, were you relying on your memory or relying on what was in your—or relying on what Wendell Odom or Dee McWilliams told you or everything?

A. I don't recall that. But in all probability I was relying on everything, but again—

Q. So what you're telling Judge Bell is, because the issue before her today is, did you have a good legal reason not to move to suppress the confession, okay?

A. I'm sorry?

Q. The issue before the Court today is did you have a good legal reason not to file a motion to suppress the confession? Do you understand that?

A. I understand that I did not file a motion to suppress, but for reasons that I'm sure the prosecutors were putting out.

Q. I'm sure. But what you told me is you didn't file a motion to suppress because you wanted the jury to hear the confession to support your insanity defense, correct?

A. That's what's in the e-mail to you.

Q. So, you believed that the confession, the videotaped confession that Ms. Modaressi made would help the jury understand that she was insane at the time of the offense?

Resp't App. 5a

MS. ROCHE: Objection, leading.

[Page 32]

THE COURT: Overruled.

THE WITNESS: Yes, I would assume so.

Q. (By Mr. Schaffer) Can you tell me how her confession established that she was insane?

A. I can't at this time, at this moment.

Q. Who has the burden of proof on insanity?

A. The defense does.

Q. It's an affirmative defense, correct?

A, Yes, sir.

Q. All right. What doctors did you consult with to testify in support of an insanity defense?

A. I'm sure Dr. Self, that's David Self—I perhaps talked to Lucy Puryear, a psychiatrist. But I can't remember that.

Q. And what is the—what do you have to prove to prove insanity?

A. I'm sorry?

Q. What do you have to show to prove insanity?

A. That at the time that it occurred and its an affirmative defense you acknowledge that that

Resp't App. 6a

happened, but you did not know at the time that it was wrong.

Q. And what you're telling Judge Bell, so I'm very clear on this, is that you made a—a sound strategic decision not to move to suppress the confession because it would show that Ms. Modaressi was insane at the time

[Page 33]

of the offense, correct?

A. Run that by me again.

Q. Yes. You made a sound strategic decision not to move to suppress the confession because you believed it would show your client was insane at the time of the offense?

A. If I could put that answer in context.

Q. It's a yes or no.

A. Well, I can't answer that yes or no. I mean, I used that statement with Dr. Self, and I think that was very important.

Q. Mr. Parnham, isn't it true that you did not even raise an insanity defense at trial?

A. If that's what the record reflects.

Q. I'm asking you, sir. Do you remember, did you raise an insanity defense at this trial?

A. I don't recall.

Resp't App. 7a

Q. Well wait a minute. You said—excuse me. You sent me an e-mail saying you didn't object to the confession because it supported your insanity defense. Now you're telling me you don't remember if you raised an insanity defense.

A. I don't think we used an insanity defense.

Q. Well, not I'm really confused. Because you told me in my—in the e-mail you sent that you didn't move

[Page 34]

to suppress the confession because it supported your insanity defense. Now you're saying you don't think you raised one?

A. I just don't think I did.

[. . . Page 85]

asking you about the interview and your investigation, that's based off of just what he's told you today about the case, is that correct?

A. That would be a fair conclusion, yeah.

Q. Mr. Parnham, one more time, you have no independent recollection of representing Ms. Modarresi in this case, correct?

A. In this case?

Q. Yes.

Resp't App. 8a

MR. SCHAFFER: Excuse me. The question is vague. Does he remember even handling the case, or does he remember specific aspects? I mean—

Q. (By Ms. Roche) Do you remember representing her in this case?

A. Independent of questions asked, I don't. But, based on questions asked, you know, my memory perhaps comes back to a degree. But I don't have any independent recollection.

Q. Would you agree that if we were asking you this questions years earlier you would remember more?

MR. SCHAFFER: Calls for speculation. Vague

THE COURT: Sustained.

Q. (By Ms. Roche) Is your memory better now than it would have been maybe five years ago?

[Page 86]

A. Absolutely not, unfortunately. My memory years ago was much better my memory is today.

MS. ROCHE: Pass the witness.

THE COURT: Any further questions?

MR. SCHAFFER: No, Your Honor.

THE COURT: May this witness be excused?

MR. SCHAFFER: He may.

Resp't App. 9a

THE COURT: Thank you for coming in to testify.  
You're good to go.

MS. ROCHE: Your Honor, could we have a quick  
restroom break before the next witness?

THE COURT: Yes. We will take a quick restroom  
break and we will resume.

(Brief recess)

THE COURT: Call your next.

MR. SCHAFFER: I'm resting.

MS. ROCHE: State rests.

THE COURT: Argument.

MR. SCHAFFER: My suggestion would be, let's get  
the transcript, present findings of fact like we did last  
time; come back in December and we present brief  
arguments. Is that okay?

MS. ROCHE: I was going to ask the same thing.

**Respondent's Appendix B**  
**(Excerpts from the Reporter's Record for**  
**Petitioner's Trial)**

Resp't App. 1b

REPORTER'S RECORD  
VOLUME 10 OF 15 VOLUMES  
TRIAL COURT CAUSE NO. 1260243

THE STATE OF TEXAS      )    IN THE DISCTRICT COURT  
                                  )  
VS.                            )    HARRIS COUNTY, TEXAS  
                                  )  
NARJES MODARRESI      )    339TH JUDICIAL DISTRICT

---

**ARGUMENTS OF COUNSEL – GUILT / INNOCENCE**

---

On the 22nd day of May, 2014, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Maria T. Jackson, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

Pamela Kay Knobloch, CSR, RPR  
Official Court Reporter  
339TH District Court  
Harris County, Texas

Resp't App. 2b

[Page 10 Line 23]

### **CLOSING ARGUMENT**

Mr. Parnham: May it please the Court, ladies and gentlemen of the prosecution, Mr. McWillaims,

[Page 11]

Miss Modarresi:

Ladies and gentlemen of this jury, our law provides that we have an opportunity, that is, both sides, State and defense, to address the jury in what is known as summation. And what we say is not evidence. What the prosecutor says or both prosecutors say is not evidence. The evidence that you've heard and that you will take into consideration in going back to the jury room and making a decision about Narjes Modarresi is the evidence that came forth from that witness stand under oath on both direct and cross-examination.

But I want to give you a few thoughts to consider when you go back and weigh the evidence in this case. We have pled not guilty to the offense of capital murder. You've heard that.

You've heard us also tell you in voir dire and tell you during the course in cross-examining a witness that this is not an insanity defense, and any reference to the insanity standard in the State of Texas is not relevant to the defense in this case.

Resp't App. 3b

Rather, the defense in this case is to, in effect, negate the necessary intent, the mens rea that is so intrinsically important in the definition of felony murder and capital murder in this case. That is the purpose of the mental health testimony that was

[Page 12]

produced.

And let me talk to you a little bit about that. There is no doubt, no doubt that Narjes Modarresi was a very sick woman after the birth of her first child. No question about it. Crawling around on her hands and knees, talking to shoes or hearing voices from shoes, grandiose delusions, as if she or her doctors were descendants of Jesus. She knew more than anybody else. Symptoms of postpartum illness.

There is no doubt that after the birth of the second child, the victim in this case—and when I say that, I want you to know that this is about children. You know, this is about doing things that are constructive to prevent actions of this fashion in the future. We will have postpartum issues that arise in the future. No question about it. From generations long born before I came into existence, we had issues of postpartum, mothers suffering from postpartum issues. We know that that was the case in this particular situation.

I want to quote to you the last question asked by Mr. McWilliams to Dr. Moeller, the State's expert, the State, in rebuttal, the last witness in this case.

Resp't App. 4b

“Do you think, Doctor, do you really think  
[Page 13]  
That if she wasn’t as sick as she was that she would have  
ever done this?”

Answer: “I don’t think she would have done it.”

Dr. Self tells you that but for the mental illness of Narjes Modarresi that goes to intent, this tragedy would have never happened. Twenty-one hours in bed. Next day bounds out, gets dressed, takes the flash drive to Amir, wraps the kid, scarves, shields from the sun.

And the rest, you know from the testimony, particularly on the videotape that we saw, Detective waters and the other detective that was acting as an interpreter, you know what happened. I want to break down for you briefly this whole statement.

“Do you think, Doctor, do you really think that if she wasn’t as sick as she was that she would have done this, that she would have ever done this?”

Answer: “I don’t think she would have done it.”

Now, let’s take that statement, question and statement; and let’s analyze this a little bit. What they are talking about is the mindset of Narjes Modarresi on the 21st of April, what was going on in her

[Page 14]  
mind? And because of her mental illness, that negates the issue of specific intent.

Resp't App. 5b

[ . . . ]

**Respondent's Appendix C**  
**(Modarresi's Article 11.07**  
**form Habeas Application)**

Resp't App. 1c

**12602430101A / Court: 339**

Case No. \_\_\_\_\_  
(The clerk of the convicting court will fill in this blank.)

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS  
APPLICATION FOR A WRIT OF HABEAS CORPUS  
SEEKING RELIEF FROM FINAL FELONY  
CONVICTION UNDER CODE OF CRIMINAL  
PROCEDURE ARTICLE 11.07**

**NAME: Narges Modarresi**

**DATE OF BIRTH: 9-8-81**

**PLACE OF CONFINEMENT: Young Complex Medical Facility**

**TDCJ-CID NUMBER: 1929374 SID NUMBER: 08586396**

**(1) This application concerns (check all that apply):**

- a conviction       parole
- a sentence       mandatory supervision
- time credit       out-of-time appeal or petition for  
discretionary review

**(2) Which district court entered the judgment of the  
conviction you want relief from?**

**339<sup>th</sup> District Court of Harris County**

**(3) What was the case number in the trial court?**

**1260243**

Resp't App. 2c

**(4) What was the name of the trial judge?**

Maria Jackson

---

**(5) Were you represented by counsel? If yes, provide the attorney's name:**

1260243

---

**(6) What was the date that the judgment was entered?**

George Parnham and Dee McWilliams

---

**(7) For what offense were you convicted and what was the sentence?**

Capital Murder - Life

---

**(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?**

---

---

**(9) What was the plea you entered? (Check one.)**

guilty-open plea       guilty-plea bargain  
 not guilty       nolo contendere/no contest

Resp't App. 3c

**If you entered different pleas to counts in a multi-count indictment, please explain:**

---

---

**(10) What kind of trial did you have?**

no jury       jury for guilt and punishment  
                                     jury for guilt, judge for punishment

**(11) Did you testify at trial? If yes, at what phase of the trial did you testify?**

No

---

**(12) Has your sentence discharged?**     yes     no

**(13) Did you appeal from the judgment of conviction?**

yes       no

**If you did appeal, answer the following questions:**

(A) What court of appeals did you appeal to? 14th

(B) What was the case number? 14-14-00427-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name: Vivian King

(D) What was the decision and the date of the decision? \_

Affirmed 4/19/16

---

Resp't App. 4c

**(14) Did you file a petition for discretionary review in the Court of Criminal Appeals?**

yes       no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? N/A

(B) What was the decision and the date of the decision?

---

**(15) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *the conviction in this case number*?**

yes       no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number?

---

(B) What was the decision and the date of the decision?

---

(C) Please the reason that the current claims were not presented and could not have been presented in your previous application.

**(16) Do you currently have any petition or appeal pending in any other state or federal court?**

yes       no

If you answered yes, please provide the name of the court and the case number:

---

**(17) If you are presenting a time credit claim, other than for pre-sentence jail time credit, have you exhausted your administrative remedies by presenting the time credit claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies.)**

yes       no

If you answered yes, answer the following questions:

**(A) What date did you present the claim to the time credit resolution system?**

---

Resp't App. 6c

(B) Did you receive a decision and, if yes, what was the date of the decision?

---

**If you answered no, please explain why you have not presented your time credit claim to the time credit resolution system of the Texas Department of Criminal Justice:**

---

---

---

(18) Beginning on page 6, state concisely every legal ground for why you think that you are being illegally confined or restrained and then briefly summarize the facts supporting each ground. You must present each ground and a brief summary of the facts on the application form. If your grounds and a brief summary of the facts have not been presented on the application form, the Court will not consider your grounds. A factual summary that merely references an attached memorandum or another ground for relief will not constitute a sufficient summary of the facts.

If you have more than four grounds, use pages 14 and 15 of the application form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

Resp't App. 7c

You may include with the application form a memorandum of law if you want to present legal authorities or provide greater factual detail, but the Court will not consider grounds for relief set out in a memorandum of law that were not raised on the application form. The memorandum of law must comply with Texas Rule of Appellate Procedure 73 and must not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum of law.

If the application form does not include all of the grounds for relief, additional grounds brought at a later date may be procedurally barred.

**GROUND ONE:**

**INEFFECTIVE ASSISTANCE OF COUNSEL AT THE  
GUILT-INNOCENCE STAGE.**

---

**FACTS SUPPORTING GROUND ONE:**

Applicant told the police that a man kidnapped her baby as she was pushing him in a stroller near a park. She was transported to the police station because the investigating officer questioned her story. A detective and a patrol officer (who speaks applicant's native language of Farsi) began to interrogate her at 9:50 p.m. When the interrogation began, she was not in custody, and they did not advise her of her rights.

Resp't App. 8c

She repeatedly insisted that her baby had been kidnapped.  
They aggressively countered that they did not believe her. She  
said that she had “nothing more to say,” but they continued to  
interrogate her. About two hours later, she said that she was  
tired and wanted to go to her mom and dad. They said that she  
could not go anywhere until the police found her baby. When  
they told her that she could not leave, her liberty had been  
significantly restrained, and the interrogation became  
custodial. However, they did not advise her of her Miranda  
rights at that juncture. Instead, they told her that, if something  
had happened to her baby, she was not criminally responsible  
because she is mentally ill; and they promised to help her  
receive, psychiatric treatment instead of incarceration if she  
took them to her baby but threatened that, if she did not do so,  
and the police found him without her help it would become a  
criminal investigation, would not go well for her, and she would  
go to prison. She agreed to take them to the baby at 1:30 a.m.  
She led them to the baby—who was buried under mud, leaves,  
and debris in a remote area near a bayou— at 1:55 a.m. After  
she was charged, they took her back to the police station,  
advised her of her Miranda rights for the first time, and  
obtained her confession that she placed the baby face down in  
the mud and covered him with mud.

Resp't App. 9c

Defense counsel did not file a motion to suppress applicant's statements to the officers and her act of leading them to her baby's body. Competent counsel would have moved to suppress this evidence on the grounds that (1) the officers failed to advise applicant of her Miranda rights once the initial interrogation became custodial; (2) they continued to interrogate her after she said that she had "nothing more to say"; (3) they induced her to confess and take them to the baby by promising to help her receive psychiatric treatment if she confessed but threatening to send her to prison if the police found the baby without her help; (4) the discovery of the body was the fruit of the unconstitutional interrogation; and (5) her confession during the second interrogation was inadmissible as the fruit of the initial unconstitutional interrogation.

[*This was the only ground for relief*]

[*Signature Pages Omitted*]