

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Senior Judge Wiley Y. Daniel**

Civil Action No. 12-cv-01363-WYD

JOSE ARTURO PENA,

Applicant,

v.

S. HARTLEY, Warden, Arkansas Valley Corr. Fac., and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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**ORDER REINSTATING CASE AND FOR ANSWER**

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Pursuant to the mandate of the United States Court of Appeals for the Tenth Circuit filed on October 31, 2014 (ECF No. 37), this civil action will be reinstated.

Respondents will be directed to file an answer in compliance with Rule 5 of the Rules Governing Section 2254 Cases that fully addresses the merits of claims 2(c) and 4, both of which involve the admission of evidence. In claim 2(c), Applicant, Jose Arturo Pena, argued against the admission of the sexual and physical assault evidence as violating his due process right to a fair trial. In claim 4, he argued that the introduction of inadmissible and prejudicial evidence deprived him of his right to a fair trial. He specifically argued against the admission of evidence that

(1) his two brothers were threatening to kill witnesses “like how [Pena] killed [Zamora]”; (2) his brother Jamie believed Pena had killed Zamora; (3) Jamie would provide his driver’s license to help Pena and his other brother avoid detection; (4) Jamie and Pena’s uncle had physically assaulted their former girlfriends; and (5) Oscar Prospero (the individual who had left the bar with Pena and Zamora the night she

was killed) had died in April 2001, shortly after Pena was arrested (but the jury was not told that he died from complications of a car accident thereby allowing it to erroneously infer he was killed at Pena's direction).

ECF No. 36 at 3-4 n.5.

Accordingly, it is

ORDERED that this civil action is **reinstated** pursuant to the mandate of the United States Court of Appeals for the Tenth Circuit filed on October 31, 2014. It is

FURTHER ORDERED that **within thirty days**, Respondents are directed to file an answer in compliance with Rule 5 of the Rules Governing Section 2254 Cases that fully addresses the merits of claims 2(c) and 4. It is

FURTHER ORDERED that a traverse, if any, and only a traverse, may be filed **within thirty days of the filing of the answer.**

Dated: December 1, 2014

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Senior United States District Judge