

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CHARLES SHEA EUBANKS,

Case No. 3:16-cv-00336-MMD-CSD

Petitioner,

ORDER

v.

RENEE BAKER,<sup>1</sup> *et al.*,

Respondents.

**I. SUMMARY**

This matter is before the Court for disposition of the merits of the remaining grounds of Petitioner Charles Shea Eubanks's counseled Third Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 43 ("Petition").)<sup>2</sup> In 2013, a Nevada jury convicted Eubanks of first-degree murder with use of a deadly weapon, attempted murder with use of a deadly weapon, and attempted robbery with use of a deadly weapon. (ECF No. 27-1.) He was sentenced, among other things, to life imprisonment without the possibility of parole. (*Id.*) In his Petition, Eubanks alleges the following: his right to a speedy trial was violated, insufficient evidence supports his convictions, he received a grossly disproportionate sentence compared to his codefendants, he received ineffective assistance of counsel, the State suppressed material impeachment evidence, and cumulative error. For the reasons discussed below, the Court denies the Petition and grants a Certificate of Appealability for Grounds 5(3), 5(7), 5(9), and 6(C)(3).

<sup>1</sup>The Nevada Department of Corrections' inmate locator page indicates Eubanks is incarcerated at High Desert State Prison, where Jeremy Bean is the warden. The Clerk of Court is directed to substitute Jeremy Bean for respondent Renee Baker. See Fed. R. Civ. P. 25(d).

<sup>2</sup>The Court dismissed Ground 3 of the Petition as not cognizable. (ECF No. 67.)

## II. BACKGROUND<sup>3</sup>

### A. Initial Contact Between Eubanks and Maxwell

On Friday, April 29, 2011, Eubanks met Michael Maxwell, Jr., at the Nugget casino in Pahrump, Nevada; although they had just met that day, they went to Las Vegas together, and upon their return, Maxwell invited Eubanks to stay at his residence. (ECF Nos. 23 at 67, 73, 79-80; 80-1 at 26-27.) Two days later, on Sunday, May 1, 2011, Maxwell requested that Eubanks accompany Troy Jackson to recover a debt from Michael Frasher. (ECF No. 23 at 66.) As Maxwell's "enforcer," Jackson sold drugs, collected tax payments for protection, and beat people. (ECF No. 80 at 80-81.) Tiffany Rubio spent time with Maxwell and Eubanks that weekend and heard that Eubanks might work for Maxwell doing the same thing as Jackson. (ECF No. 80-1 at 36-37.) Maxwell gave two knives to Eubanks and \$20 to Eubanks, Jackson, and Jackson's girlfriend, Victoria Garcia, to buy gloves and cigarettes, which they purchased on the way to visit Frasher. (ECF Nos. 23 at 66-67, 69; 80 at 61-62, 101-02, 124.) Maxwell told Jackson to "get [Frasher]" if he had a chance to do so. (ECF No. 80 at 62-63.)

### B. Stabbing of Frasher and Bell

Jackson learned Frasher was in a camper at Antoinette Bell's residence and Garcia drove them to the camper in Maxwell's white van. (ECF Nos. 79-6 at 133-34; 80 at 53, 58, 94.) Garcia overheard Eubanks tell Jackson he would "do it" if Jackson was unable. (ECF No. 80 at 118.) Garcia saw Eubanks holding knives under his armpits and believed Jackson had a pocketknife. (*Id.* at 98, 105.) Jackson discovered Frasher had no money or drugs. (*Id.* at 59.) Maxwell telephoned while they were with Frasher and told Eubanks "To handle his business and get back home." (ECF Nos. 23 at 69; 80 at 60-61.)

---

<sup>3</sup>The Court summarizes the relevant state-court record solely as background for consideration of the issues in this case. The Court makes no credibility or factual findings regarding the truth or falsity of evidence or statements of fact in the state court. No assertion of fact made in describing statements, testimony, or other evidence in the state court constitutes a finding by this Court. Failure to mention a specific piece of evidence or category of evidence does not signify the Court overlooked it in considering the issues.

1 Eubanks told Jackson and Garcia that Maxwell gave the green light to kill Frasher.  
2 (ECF No. 80 at 61, 85, 109-10.) Jackson, Frasher, Bell, and Eubanks, entered Bell's  
3 camper, and, according to Jackson, Jackson stabbed Bell while Eubanks killed Frasher.  
4 (ECF No. 80 at 55-56, 61, 63.) Jackson said Eubanks "kneeled down beside Mike  
5 Frasher's body stabbing him in his cage" and kept stabbing Frasher because Frasher was  
6 "flinching." (*Id.*) Jackson said he told Eubanks that Bell would not die, and Eubanks  
7 "stepped over Michael Frasher, stabbed [Bell] twice in her stomach," and resumed  
8 stabbing Frasher. (*Id.* at 63, 82.) After Bell stopped moving, and Eubanks "had finished  
9 off [Frasher]," Jackson and Eubanks left. (*Id.* at 64-65.)

10 Bell ran to a neighbor for help. (ECF Nos. 79-6 at 158; 79-7 at 41.) When the Nye  
11 County Sheriff arrived, Bell was asked, "Who did this?" and she replied, "Troy [Jackson]."  
12 (ECF No. 79-7 at 41.) The Sheriff found Frasher in the camper bleeding and gasping for  
13 air; Frasher later died at the hospital from multiple stabs and incise wounds to his head,  
14 neck, and torso. (ECF Nos. 79-6 at 54; 79-7 at 102.) Bell survived a laceration to her  
15 throat and 11 stab wounds to her back, chest, abdomen, legs, and arms. (ECF No. 79-6  
16 at 82.)

### 17 **C. Bell's Conflicting Statements**

18 Nye County Sheriff's Office Detective David Boruchowitz interviewed Bell at the  
19 hospital on May 4, 2011. (ECF No. 79-7 at 183-85.) Bell identified Jackson as her attacker  
20 and said he had a flip-blade knife. (*Id.*) Bell said Jackson stabbed Frasher. (*Id.*) When  
21 asked how Bell knew Jackson stabbed Frasher, Bell replied that Jackson was the only  
22 one standing there at the time. (*Id.* at 185-86.) At trial, Boruchowitz opined that Bell's  
23 response implied she did not see Jackson stab Frasher. (*Id.*) However, Boruchowitz  
24 agreed that Bell unequivocally stated Jackson stabbed her and Frasher. (ECF No. 23 at  
25 46.)

26 Nye County Sheriff's Detective Michael Eisenloffel conducted a follow-up interview  
27 of Bell at the hospital on May 5, 2011. (*Id.* at 103-05, 109). Bell told Eisenloffel, "They all  
28 came in. They stabbed [Frasher] in my camper, two guys. When they stabbed him, they

1 noticed me looking for my knife, stabbed me 26 times.” (*Id.*) Bell twice stated, “I know it  
2 was both of them.” (*Id.* at 107.) However, Eisenloffel agreed that Bell more than once  
3 stated Jackson was the only person with a knife and it was Jackson who stabbed Frasher.  
4 (*Id.* at 166-67.) Bell also told Eisenloffel the knife was as big as Jackson’s hand, was  
5 bloody before Jackson attacked her, and she thought Eubanks just stood there. (*Id.*)  
6 Eisenloffel admitted he testified at the preliminary hearing that Bell identified Jackson as  
7 the person who stabbed her and Frasher. (*Id.* at 168-69.)

8 Bell testified at trial that she knew Jackson but never saw Eubanks until the day of  
9 the stabbings. (ECF No. 79-6 at 149-50, 159.) Bell said she “got stabbed by Troy  
10 Jackson.” (*Id.* at 157, 159.) She said “Eubanks was just standing there by the door  
11 watching the whole entire time. I’m not sure if he actually had—if he actually got [Frasher].  
12 I don’t think he did.” (*Id.* at 156.) However, Bell later clarified “he,” meant “Jackson.” (*Id.*)

13 On cross-examination, Bell agreed she told a detective that Jackson was the only  
14 person who had a knife during the attack, and she saw Jackson repeatedly stab Frasher,  
15 then stab her, and then stab Frasher a few more times to ensure he was dead. (ECF No.  
16 79-7 at 39, 45-48.) She told the detective she never saw Eubanks with a knife or with any  
17 blood on him. (*Id.*) She said she told the detective she knew Jackson stabbed Frasher  
18 because Jackson “was the only one with a knife at that point.” (*Id.* at 42-43.) She told the  
19 detective Eubanks stood next to Jackson but “he did not have any objects in his hand.”  
20 (*Id.*) Bell agreed that she consistently testified in other proceedings that it was Jackson  
21 who stabbed Frasher. (*Id.* at 45-48.)

22 On redirect examination, Bell testified her memory was better soon after the event.  
23 (*Id.* at 49.) She agreed she was heavily medicated and breathing through a tube during  
24 her first interview with the detective at the hospital. (*Id.* at 58.) She said Frasher “was  
25 already down” when she looked up and saw Jackson stabbing her. (*Id.* at 53-54.) She  
26 saw Jackson stab Frasher as Jackson left the camper. (*Id.* at 57.) She “slightly” recalled  
27 previously testifying she did not see who stabbed Frasher. (*Id.*)

28 ///

1           **D.     Eubanks' Statements**

2           Detective Boruchowitz learned Garcia and Jackson were involved in the stabbings  
3 and drove a white van that might be located at Maxwell's residence. (ECF No. 79-7 at  
4 169-70, 173.) At Maxwell's residence on the night of the stabbings, Jackson, Eubanks,  
5 and Garcia, told Boruchowitz they never left the residence that day and knew nothing  
6 about the stabbings. (*Id.* at 174-76.)

7           After his arrest, Eubanks gave an interview in the presence of his counsel, the  
8 prosecutor, and the prosecutor's investigator, in which he confessed he previously gave  
9 versions of the facts to distance himself from the incident. (*Id.* at 202.) Eubanks confessed  
10 they went to rob Frasher, but Frasher and Bell had nothing for them to steal and Jackson  
11 punched Frasher while Eubanks ran away. (ECF Nos. 23 at 38-40; 79-7 at 202-03; 80-1  
12 at 70-71.) Eubanks said that, when they returned to Maxwell's residence, the first thing  
13 Maxwell asked was whether they had his money, and Maxwell was "happy with the results  
14 and how it went." (ECF Nos. 23 at 38; 79-7 at 203-04.) Eubanks said they burned  
15 evidence in the firepit and cleaned the van. (ECF No. 79-7 at 200-01, 204.)

16           **E.     Witness Statements**

17           Alessandra Vich testified she was Eubanks's girlfriend at the time of the stabbings  
18 and that soon after his arrest, she asked Eubanks if he murdered someone; he replied,  
19 "yes," and stated he murdered "the guy." (ECF No. 23 at 125, 134-35.) Codefendant Rubio  
20 testified that she asked whether Bell and Frasher were "dead," and Eubanks said, "Yes.  
21 It was easy," and made a slashing motion across his throat. (ECF No. 80-1 at 37.) Rubio  
22 heard Jackson say he could not "finish it," and Eubanks had to finish it. (*Id.* at 38.)  
23 Codefendant Maxwell testified Eubanks told him he put a knife through Frasher's head  
24 and tried to "finish off" Bell after Jackson told Eubanks that Bell would not die. (ECF No.  
25 23 at 71.) Maxwell testified that, after they were arrested, Eubanks told him, "I thought  
26 you wanted me to kill him." (*Id.* at 70.)

27           Johnny Dowling testified he was acquainted with Frasher. (*Id.* at 50, 54-55.)  
28 Dowling, who was himself facing felony charges, testified based on an agreement with

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.