IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 16-218
JEROME WOODS	:	

MEMORANDUM

SURRICK, J. **JANUARY 26, 2018**

Presently before the Court is Jerome Woods's Motion to Suppress Cocaine and Cocaine Base Confiscated from 2027 West Master Street, Philadelphia (ECF No. 456). For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

On August 9, 2017, a grand jury returned a Second Superseding Indictment charging Defendant Jerome Woods with conspiracy to distribute marijuana, conspiracy to commit money laundering, and other substantive crimes. (Superseding Indictment, ECF No. 302.)[1] Defendant was charged with fifteen other co-Defendants, some of whom have entered plea agreements with the Government. The Government alleges that Defendant was involved in a conspiracy to transport bulk quantities of drugs from the west coast to the east coast. In the instant Motion,

[1] Specifically, Defendant Jerome Woods was charged with conspiracy to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A) (Count One); attempted possession of 50 kilograms or more of marijuana with intent to distribute, and aiding and abetting, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(C), and 18 U.S.C. § 2 (Count Two); attempted possession of 100 kilograms of marijuana with intent to distribute, and aiding and abetting, in violation of 18 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B), and 18 U.S.C. § 2 (Count Seven); and conspiracy to commit money laundering and aiding and abetting, in violation of 18 U.S.C. § 1956(h) and 18 U.S.C. § 2 (Counts Nine and Ten).

Defendant seeks to suppress evidence that was seized pursuant to a search warrant of a residence owned by Defendant.

A. Factual Background

Defendant was indicted on May 25, 2016. He was arrested on June 16, 2016, at 2027 West Master Street in Philadelphia. (Dec 5, 2016 Hr'g Tr. 283-85.) When FBI agents executed the arrest warrant, they performed a protective sweep of the premises and observed cocaine on the floor of the basement bathroom. A search warrant for the residence was later obtained as a result of the FBI agents' observations.

FBI Special Agent Jeffrey Hunter testified about the events surrounding Defendant's arrest at a hearing on December 5, 2017. He testified that FBI agents went to the Master Street residence to execute the arrest warrant because they believed Defendant was there. (Dec. 5 Hr'g Tr. 285.) Prior to executing the arrest warrant, the agents had been surveilling the Master Street residence for two to three hours and did not report that anyone entered or exited the residence. (*Id.* at 295.) There were two vehicles parked at the residence, one of which belonged to Defendant's girlfriend. (*Id.* at 285.) The other vehicle was a van that the FBI agents had observed Defendant driving during the course of the investigation. (*Id.*) The FBI agents proceeded to the door of the residence "to knock and announce [their] presence." (*Id.* at 286.) There was no response. (*Id.*) The agents continued to knock and announce their presence for another 30-45 seconds. When there was no response, a decision was made to forcibly breach the front door of the residence with a ram. (*Id.*) It took approximately two minutes to breach the door, during which time agents continued to yell, "police, warrant, come to the door." (*Id.* at 287.)

After the door was breached, agents began "flowing into the residence." They conducted a sweep of the residence to locate any persons, including Defendant. (*Id.*) On the first floor there was a door that led to a basement staircase. (*Id.* at 288.) The door was closed. (*Id.* at 289.) Agents opened the door and called out to anyone in the basement. (*Id.*) They heard a noise and believed that at least one person, but possibly more, were in the basement. (*Id.*) The agents heard someone say "I'm coming," which they ultimately learned was the voice of Defendant. (*Id.*) The agents gave commands to Defendant to appear at the bottom of the stairs, but heard no response. (*Id.* at 290.) It took Defendant a minute to appear at the bottom of the basement stairs. (*Id.*) He was wearing only boxer shorts. (*Id.*) Defendant was ordered to come up from the basement. He complied, was arrested, and was handcuffed. (*Id.* at 290-91.)

After Defendant was taken into custody, Agent Hunter and another FBI agent proceeded to the basement to conduct a "visual" protective sweep "looking for additional persons." (*Id.* at 291.) The sweep included visually inspecting the basement bathroom. (*Id.*) When Agent Hunter approached the bathroom, he detected the smell of cocaine emanating from the bathroom. (*Id.*) When he looked inside the bathroom, he saw several clear plastic bags with a white substance in them at the base of the toilet. (*Id.* at 292.) Agent Hunter did not confiscate what he found. Instead, he completed the protective sweep and reported his observations to FBI Special Agent Kevin Lewis. (*Id.*) That same day, Agent Lewis sought and was granted a search warrant for the Master Street residence based on the information provided by Agent Hunter. (*Id.* at 292-93; Lewis Aff., Def.'s Mot. Ex. A.)

B. Procedural History

Defendant filed the Motion to Suppress on November 14, 2017. (Def.'s Mot., ECF No. 456.) The Government filed a Response in Opposition to the Motion on December 1, 2017.

(Gov't's Resp., ECF No. 465.) An evidentiary hearing was held on December 5, 2017. (*See* ECF No. 487.) Special Agent Hunter was the only witness who testified at the hearing.

II. DISCUSSION

Defendant argues that the FBI agents' protective sweep of the basement violated his Fourth Amendment rights since Defendant had already been arrested and secured. He contends that the protective sweep exceeded constitutional bounds because the agents lacked a reasonable belief that there was anyone else besides Defendant located inside the Master Street residence. The Government argues that Agent Hunter's testimony supports a finding that the protective sweep was warranted.

"A search of a house without a warrant issued on probable cause is generally unreasonable." *United States v. White*, 748 F.3d 507, 511 (3d Cir. 2014). However, the Supreme Court has articulated exceptions to this warrant requirement for protective sweeps. *See Maryland v. Buie*, 494 U.S. 325, 327 (1990). "A 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." *Id.* The purpose of a protective sweep is to "assure [law enforcement officers] that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack." *Id.* at 333. In *Buie*, the Supreme Court held that:

> [A]s an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. [*Buie* Prong #1]. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. [*Buie* Prong #2].

Id. at 334.

The Government does not contend that its search of the basement falls under the first *Buie* prong, which permits warrantless searches incident to arrest in places "immediately adjoining the place of arrest." *Id.* Instead, the Government contends that the FBI agents were authorized to conduct a protective sweep under the second *Buie* prong, which permits warrantless searches "based on reasonable and articulable suspicion that areas being searched may harbor an individual who poses a danger to those present at the scene of the arrest." *White*, 748 F.3d at 511 (internal quotation marks omitted).

We are satisfied that the credible testimony of Agent Hunter revealed sufficient "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that" the basement may harbor one or more individuals besides Defendant who could pose a danger to those at the scene. *Buie*, 494 U.S. at 334. The Agents had been investigating a large scale drug trafficking ring involving the transport of bulk quantities of drugs across the country. Defendant was indicted on serious felony drug offenses related to that investigation. The agents observed two cars outside of the residence—one they had observed Defendant driving and the other one belonged to his girlfriend. The agents had to forcibly breach the door when there was no response to their knock and announce. Once inside the residence, agents heard a noise from someone in the basement. However, they were unable to tell how many people were down there. Suspicions grew when the individual in the basement—later determined to be Defendant—took "what seemed like a very long time" to appear at the basement steps despite repeated orders from FBI agents to do so. (Dec. 5 Hr'g Tr. 290.) The purpose of a protective sweep is to confirm whether there was an ongoing threat. Based on the circumstances of this arrest, including Defendant's failure to

respond, the FBI agents were justified in believing that such a threat may have existed in the basement.

In addition, the sweep was proper in scope since the officers conducted a quick visual search of the area simply to determine whether there were other individuals that could pose a risk to their safety. A protective sweep can "last[ ] no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises." *Buie*, 494 U.S. at 335-36. The evidence in this record demonstrates that the sweep of the basement conducted by the agents was reasonably tailored for its purpose. No evidence was confiscated during the sweep. Instead, Agent Hunter reported his observations to Agent Lewis and a search warrant was subsequently sought.

Defense counsel argues that after Defendant was arrested, a sweep of the basement was unnecessary because the agents could have simply escorted Defendant out of the residence through the front door, which was only 10-15 feet away. (Dec. 5 Hr'g Tr. 300.) However, defense counsel fails to consider that Defendant was wearing only boxer shorts at the time of his arrest, and that the agents needed to go to the second floor to retrieve clothing for Defendant. At the time of the arrest, the FBI agents did not know whether another individual might appear from the basement with a weapon. Under these circumstances, conducting a protective sweep of the basement before the agents retrieved clothing for Defendant was a reasonable precautionary step to "assure themselves" that Defendant was not "harboring other persons who are dangerous and who could unexpectedly launch an attack." *Buie*, 494 U.S. at 333.

Based upon the totality of the evidence presented at the hearing, the protective sweep of the basement conducted by the FBI agents was justified under the circumstances. Defendant's Fourth Amendment rights were not violated.

III. CONCLUSION

For these reasons, Defendant's Motion to Suppress Cocaine and Cocaine Base Confiscated from 2027 West Master Street, Philadelphia will be denied.

An appropriate Order follows.

BY THE COURT:

R. BARCLAY SURRICK, J.

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ORDER

AND NOW, this 26th day of January, 2018, upon consideration of Jerome Woods's Motion to Suppress Cocaine and Cocaine Base Confiscated from 2027 West Master Street, Philadelphia (ECF No. 456), and all documents submitted in support thereof and in opposition thereto, and after an evidentiary hearing, it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

R. BARCLAY SURRICK, J.