IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v. **CRIMINAL NO. 1:05CR107-3**
(Judge Keeley)

AMANDA SMITH,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA BE ACCEPTED AND SCHEDULING SENTENCING HEARING

On February 2, 2006, defendant, Amanda Smith, appeared before United States Magistrate Judge John S. Kaull and moved this Court for permission to enter a plea of GUILTY to count six of the Indictment. The defendant stated that she understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon the defendant's statements during the plea hearing and the testimony of Sergeant Robert Cook, the magistrate judge

found that the defendant was competent to enter a plea, that the plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against her and the consequences of her plea, and that a factual basis existed for the tendered plea. On February 3, 2006, the magistrate judge entered an order finding a factual basis for the plea and recommending that this Court accept the plea of guilty to count six of the Indictment.

The magistrate judge also directed the parties to file any written objections to the report and recommendation within ten (10) days after service of the report and recommendation. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the report and recommendation.

The parties did not file any objections. Accordingly, this Court finds that the magistrate judge's recommendation should be **AFFIRMED** and **ACCEPTS** the plea of guilty to count six of the Indictment.

The Court **ADJUGES** the defendant **GUILTY** of the crime charged in count six. Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), acceptance of the proposed plea agreement and stipulated addendum to the plea agreement, is **DEFERRED** until the

Court has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., it is hereby **ORDERED** that:

1. The Probation Office undertake a presentence investigation of **AMANDA SMITH** and prepare a presentence report for the Court;

2. The Government and the defendant are to provide their versions of the offense to the Probation Officer by March 3, 2006;

3. The presentence report is to be disclosed to the defendant, defense counsel, and the United States on or before **April 3, 2006**; however, the Probation Officer is directed not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(b)(6)(A);

4. Counsel shall file **WRITTEN OBJECTIONS** to the presentence report and may file a **SENTENCING MEMORANDUM** that evaluates sentencing factors the parties believe to be relevant under 18 U.S.C. § 3553(a) (including the sentencing range under the advisory Guidelines) and explains any proposed sentence, on or before **April 17, 2006;**

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA BE ACCEPTED AND SCHEDULING SENTENCING HEARING

5. The Probation Office shall submit to the Court the presentence report with addendum on or before **May 1, 2006**; and

6. Sentencing is set for **May 30, 2006** at **10:00 a.m.**

7. The Court remanded the defendant to the custody of the United States Marshals.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: February 16, 2006

Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE