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The majority identifies the following circumstances as the factual basis for denying Cherry's directed verdict on the distribution charge:

> 1) Cherry's arrest occurred in a high crime area known for violence and drug activity;
>
> 2) Cherry had a small bag containing approximately eight rocks of crack cocaine;
>
> 3) Cherry had no crack pipe or other drug paraphernalia with him indicating the crack was for his personal consumption;
>
> 4) Cherry had $322 cash on his person, mostly in twenty dollar bills;
>
> 5) Officer Parker testified a single rock of crack cocaine is typically sold for twenty dollars.

The majority does not discuss why the above circumstances provide inferences which could reasonably support a finding of guilt beyond a reasonable doubt on the distribution charge. For the following reasons, I conclude these circumstances do not provide a factual basis to submit the charge of possession with intent to distribute to the jury.

1) High Crime Area - There is no evidence that a person who possesses crack cocaine in a high crime area is more likely to distribute the crack cocaine than to purchase it. Indeed, logic defeats the conclusion. If there is a greater incidence of street level crack cocaine distribution in a high crime area, it is only logical to conclude that a concentrated number of drug users are in that area as well. Consequently, this circumstance does not provide a logical basis for concluding Cherry intended to distribute the crack cocaine, as opposed to using it. For the same reason, this circumstance adds nothing to any of the other predicate facts to establish an intent to distribute.

2) Eight rocks of crack cocaine - The second circumstance involves the crack cocaine itself. Cherry had eight rocks of crack cocaine weighing less than

a conclusion of intent to distribute nor a conclusion of personal use is reasonably premised upon this circumstance.

4 & 5) $322 in cash and police officer's testimony - Lastly, there is the $322 in cash seized from Cherry, coupled with the police testimony that crack cocaine is often sold in twenty dollar amounts. The amount of money is certainly not noteworthy. See Young, 99-1264, p.13, 764 So. 2d at 1006 ($370.00 in cash "[was] not so large that no other inference was possible. Accordingly, a rational trier of fact could not have concluded beyond a reasonable doubt that the State proved the 'intent to distribute' element of the crime." (citation omitted)). Many people carry cash, and many people cash their entire paychecks, choosing not to maintain a checking account. Certainly the fact of possession of a relatively small amount of currency does not, in and of itself, allow an inference of illegal activity.

This amount of currency is not consistent with the amount related by law enforcement as the value of multiple rocks of crack cocaine. There is no testimony that crack cocaine is sold for $2, $12, $22 or in any other multiple of two dollars, which would help explain the additional $2. Furthermore, twenty dollar bills are not unusual denominations to carry. They are the predominant bills used at banks and automatic teller machines for cash withdrawals of hundred dollar multiples. To be sure, the money Cherry possessed is consistent with a guilty intent to distribute. But it is no less consistent with possession for personal use. To base a conclusion on it, then, is to rest on pure speculation.

None of these circumstances provides a basis for reasonably inferring an intent to distribute.[5] Furthermore, they are not substantial in combination. As Judge Shuler points out in his concurring and dissenting opinion:

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[5] As the majority points out, the trial judge declined to consider any implications from the presence of the weapon, because police attributed it exclusively to Cherry's sister. In any event, there was no expert testimony to provide an evidentiary basis for inferring an intent to distribute from the presence of the weapon.

drug residue and maps, coupled with police officer's testimony opining that the residue indicated large shipment of marijuana had been transported in airplane); State v. Durham, 266 S.C. 263, 267-68, 222 S.E.2d 768, 769-70 (1976) (police seized fifty pounds of marijuana and delicate scales used to weigh small amounts of chemicals and police testified at trial as to significance of the scales); State v. Muhammed, 338 S.C. 22, 25, 524 S.E.2d 637, 638-39 (Ct. App. 1999) (police found $1085 in cash in a large roll, forty-two bullets, three pagers, a cell phone, and a razor blade with traces of cocaine on it in a car and two pistols and 19.7 grams of crack cocaine in the house); State v. Peay, 321 S.C. 405, 411, 468 S.E.2d 669, 672 (Ct. App. 1996) ($10,500 in cash); State v. Mollison, 319 S.C. 41, 44, 459 S.E.2d 88, 90 (Ct. App. 1995) (crack cocaine individually packaged in eighteen separate baggies and marijuana packaged in separate bags in one larger bag, found with defendant at motel).

Our case law is in accord with other jurisdictions, as well. See, e.g., United States v. Marszalkowski, 669 F.2d 655, 662 (11th Cir. 1982) ("the high purity of the cocaine found . . . , along with the recovery from [defendant's] apartment of substance used to cut cocaine, a large amount of cash ($10,500.00) and a weapon . . . constitute[d] surrounding circumstances from which [defendant's] intent to distribute [was] readily inferrable"); Buffington v. State, 538 S.E.2d 528, 529 (Ga. Ct. App. 2000) ($1400.00 in cash, written ledger containing names and initials, with numerical amounts in pounds and ounces, coupled with expert testimony deciphering the ledger, provided sufficient evidence of intent to distribute the large amount of marijuana possessed by defendant to support conviction for possession with intent to distribute marijuana); State v. Konfrst, 556 N.W.2d 250, 263 (Neb. 1996) (police expert testimony that individually wrapped baggies of drugs found in defendant's possession contained amounts normally sold on the street, that amount of drugs recovered was more than is commonly kept for personal use, that cash found is usual mode of payment, that triple scale found in defendant's possession is commonly used to weigh the drugs, and that the empty baggies found in defendant's possession were the same type as those used to hold the recovered drugs was evidence sufficient to support conviction for possession with intent to distribute); State v. Zitterkopf, 463 N.W.2d 616, 621 (Neb. 1990) (evidence including large quantity of marijuana, the type of packaging, sophisticated scales found at residence, along with other equipment and supplies, coupled

charge when defendant requests more than the standard self-defense charge and the evidence supports the request); Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (1991) (counsel was ineffective in failing to request additional jury instructions on self-defense when warranted by the evidence, despite fact that judge had instructed jury in accordance with prior court-approved self-defense charge); State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989) (court erred in giving a prior-approved charge exclusively without considering the facts and circumstances of the particular case when defense counsel repeatedly requested additional charges based in common law); State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987) (reversing conviction for cocaine trafficking where the charge requested was a correct statement of the law but charge given did not adequately cover the substance of the request); State v. Brownlee, 318 S.C. 34, 38, 455 S.E.2d 704, 706 (Ct. App. 1995) (reversing conviction for possession with intent to distribute because, "although the charge as given correctly stated the elements of the offense, it did not adequately cover the substance of [the defendant's] request").

Here, the charge requested by Cherry is a correct statement of the law on circumstantial evidence. See Needs, 333 S.C. at 159 n.13, 508 S.E.2d at 870 n.13; Edwards, 298 S.C. at 275, 379 S.E.2d at 889. Viewing the evidence in the light most favorable to Cherry,[8] I believe the jury could have found the sum of the circumstantial facts asserted by the State to be as consistent with Cherry's innocence *of intent to distribute* crack cocaine as with his guilt. Hence, I would find the unique inferential nature of the circumstances presented in this case justified additional instructions to guide the jury in making appropriate logical inferences and thus preclude a finding of guilt based on mere probability. See Grippon, 327 S.C. at 87-88, 489 S.E.2d at 466-67 (Toal, J., concurring in result only) (In "clarif[ying] the jury's responsibility to evaluate circumstantial evidence carefully," the Edwards charge forecloses the possibility that the jury "'may leap logical gaps in the proof offered and draw unwarranted conclusions based on probabilities of low degree.'") (quoting People v. Ford, 488 N.E.2d 458, 465 (N.Y. 1985)).

[8] See State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996).

It must be noted that nothing in Grippon or Needs precludes a trial court from giving the more detailed Edwards charge, including the language that all of the circumstances proffered by the State must "point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." Edwards, 298 S.C. at 275, 379 S.E.2d at 889. Indeed, in Grippon the court reiterated it has "never rejected the 'reasonable hypothesis' phrase or found [that it] shifted the burden of proof" from the State. Grippon, 327 S.C. at 82, 489 S.E.2d at 462; see also State v. Harry, 321 S.C. 273, 279, 468 S.E.2d 76, 80 (Ct. App. 1996) (approving use of "reasonable explanation" phrase). Furthermore, continued approval of the Edwards charge is rendered superfluous if the charge is not given when necessitated by the factual posture of the case.

As our supreme court has said, "[t]he purpose of a charge is to enlighten the jury. This purpose is accomplished by a statement of the law which fits the concrete case . . . ." State v. Fair, 209 S.C. 439, 445, 40 S.E.2d 634, 637 (1946) (quoting State v. DuRant, 87 S.C. 532, 534, 70 S.E. 306, 307 (1911)). In my view, while the Grippon charge "obviously is a correct statement of the law," it does not cover the substance of Cherry's requested instruction. It was therefore error to refuse the request.

Moreover, the court's failure to give the additional instruction cannot be considered harmless, because there exists a reasonable likelihood the jury was unaware it should acquit if it found the combined circumstances relied upon by the State equally susceptible of an inference inconsistent with guilt of the crime charged. See, e.g., State v. Jefferies, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994) ("In making a harmless error analysis, our inquiry is not what would the verdict have been had the jury been given the correct charge, but rather did the erroneous charge contribute to the verdict rendered."). In my opinion, Cherry was prejudiced by the court's refusal to give the requested charge, particularly in light of a clearly impermissible closing argument wherein the solicitor stated there was evidence Cherry "had already distributed some crack," and that there was "no evidence that he was going to use [the crack] personally for himself." Accordingly, I would reverse the conviction and remand for a new trial.