

DISSENTING OPINION BY LEVINSON, J.

I agree with Justice Acoba that: (1) on the record in this case, the circuit court abused its discretion in denying Carmichael's motion to dismiss Count II of the indictment -- charging him with promoting a dangerous drug in the third degree in violation of HRS § 712-1243 (1993 & Supp. 1999) -- as de minimis pursuant to HRS § 702-236 (1993), see Justice Acoba's dissenting opinion at 3; (2) contrary to Justice Ramil's view, "there is no conflict between HRS § 702-236 and HRS § 712-1243, and, accordingly, both statutes are to be given application, where appropriate," see id.; and (3) "in the absence of attendant circumstances that '[cause or] threaten the harm or evil sought to be prevented by [HRS § 712-1243]'" or "[do] so only to an extent too trivial to warrant the condemnation of conviction," see HRS § 702-236(1)(b), possession of an amount of a controlled substance that is "so minuscule that it cannot be sold or used in such a way as to have any discernible effect on the human body," see State v. Viernes, 92 Hawai'i 130, 134, 988 P.2d 195, 199 (1999) (citing State v. Vance, 61 Haw. 291, 307, 602 P.2d 933, 944 (1979)), constitutes a de minimis infraction as a matter of law, see Justice Acoba's dissenting opinion at 3. I wish to emphasize, however, that I neither read Justice Acoba's dissenting opinion as establishing a bright line rule, as a universal matter, as to which infractions are factually de minimis as a matter of law and which are not, nor necessarily subscribe to the particulars of Justice Acoba's analysis regarding the foregoing three general propositions.