CONCURRING OPINION BY LEVINSON, J.,
WITH WHOM MOON, C.J. JOINS

I agree with the majority that State v. Wallace, 80 Hawai'i 382, 910 P.2d 695 (1996), governs the outcome of this appeal and that, applying Wallace: (1) the prosecution laid "a proper foundation for the identity of the crystalline substances," namely, methamphetamine, and the circuit court therefore "did not abuse its discretion in allowing Mohammed to testify as to the identity of the crystalline substances" (emphasis added); and (2) "a proper foundation for the weight of the methamphetamine was not established" (emphasis added), and the circuit court therefore erred in allowing Mohammed's testimony on that subject. Majority opinion at 19, 27. Accordingly, I also agree that the Intermediate Court of Appeals (ICA) erred in affirming Manewa's convictions of promoting a dangerous drug in the first and second degrees, that the convictions should be vacated, and that the matter should be remanded to the circuit court with instructions to enter a judgment convicting Manewa of the included offenses of promoting a dangerous drug in the second and third degrees, respectively, and sentencing him pursuant thereto. Majority opinion at 29-32.

Like the majority, I believe that State v. Schofill, 63 Haw. 77, 621 P.2d 364 (1980), is inapposite to the matter before us, but not for the reasons that the majority gives. See majority opinion at 15-16. Rather, I believe that Schofill is susceptible to misinterpretation and is in need of further analysis.

It appears that "Tiny" Schofill was a Maui drug dealer who was importuned by a Maui Police Department undercover officer to sell him a quarter ounce of cocaine. Tiny agreed to do so, through an intermediary, in return for $550.00, which the officer paid. After several fits and starts, the intermediary produced four clear plastic packets of white powder, which he acknowledged weighed less than the requested quarter ounce but which he offered to the officer as a first delivery, the remainder to follow. The officer said no dice, asked for his money back, and apparently received it. Thus, as the Schofill court put it, "[n]o actual purchase was ever consummated with the defendant." See Schofill, 63 Haw. at 78-80, 621 P.2d at 366-67.

A Maui grand jury later returned an indictment against Tiny, charging him with promoting a dangerous drug in the first degree, in violation of HRS § 712-1241(1)(b), identical in all material respects to the current incarnation. Id. at 78, 621 P.2d at 366. Tiny moved to dismiss the indictment. The undercover officer, the prosecution's only witness at the hearing on Tiny's motion, testified that, having run around the track a time or two in the performance of his duties, the white powder surely did appear to him to be cocaine. Id. at 80, 621 P.2d at 367-68. A skeptical circuit court wondered how in the world the prosecution was going to prove at trial that the white stuff was in fact cocaine (as opposed, say, to confectioner's sugar or dandruff) and dismissed the indictment on the ground, inter alia, that it was unsupported by competent evidence. Id. at 78, 80, 621 P.2d at 366, 368.

On appeal, this court reversed the circuit court's order dismissing the indictment and remanded the matter for trial, based upon the following reasoning, which bears close scrutiny:

> Where possession of narcotics is the gist of the offense charged, the government must establish beyond a reasonable doubt that the substance involved is that specified in the indictment. The same rule obtains where the sale has been consummated. [Tiny], however was indicted for knowingly distributing proscribed drugs under HRS § 712-1241 . . . .
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> A person "distributes" a dangerous drug when he sells, transfers, gives, or delivers to another, or leaves, barters, or exchanges with another, or offers or agrees to do the same. Thus, the crime of promoting a dangerous drug by distributing the same is complete where, with the specific intent to sell, the accused has offered to sell the contraband. Thus, the trial court erred when it presumed that the white, powdery substance which the defendant offered to sell through his intermediary must have been shown beyond a reasonable doubt to be cocaine before a conviction could be obtained.
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> The essential question before the grand jury was whether [Tiny] intended to sell the proscribed drug to the undercover police officer. Considering the history of the negotiations between the officer and [Tiny] or his intermediary, the representation that the narcotic offered to be sold was cocaine, and the officer's familiarity with the substance, we find that there was ample evidence presented to the grand jury from which a trial jury could have found [Tiny] guilty of offering to sell narcotics beyond a reasonable doubt.[1] The challenged testimony was neither incompetent nor prejudicial, and the trial court ought not to have dismissed the indictment on that particular ground.

Id. at 80-81, 83-84, 621 P.2d at 368, 370 (citations omitted) (some emphasis added and some in original).

I would limit Schofill's ongoing vitality to instances of "promoting" a controlled substance by way of "distribution," under circumstances in which a sale has been cut short, such that the prosecution's proof is limited to a defendant's "offering to

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[1] I note that, problematically, the foregoing reasoning renders the form of promoting a dangerous drug at issue in Schofill virtually indistinguishable from the offense of attempted promoting a dangerous drug. See HRS § 705-500 (1993).

sell" a controlled substance, accompanied, of course, by the requisite state of mind. By its own analysis, Schofill is inapplicable to instances, such as the matter before us, in which "the sale has been consummated" and "the government must establish beyond a reasonable doubt that the substance involved is that specified in the indictment." Id. at 80, 612 P.2d at 368. It is for that reason that Schofill is inapposite to and distinguishable from the matter at hand.