IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MICHAEL CLEMENTE JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D09-1711

Opinion filed June 22, 2010.

An appeal from the Circuit Court for Duval County.
Mark H. Mahon, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Charlie McCoy, Senior Assistant Attorney General, Tallahassee, for Appellee.

CLARK, J.

The appellant was convicted of sale or delivery of cocaine, as proscribed by section 893.13(1)(a)(1), Florida Statutes. In this appeal he challenges the constitutionality of that statute, in that it makes the offense a felony without

requiring that guilty knowledge be an element of the crime. Relying on language in Staples v. United States, 511 U.S. 600, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), and Chicone v. State, 684 So. 2d 736 (Fla. 1996), the appellant argues that this offends substantive due process. Staples and Chicone referred to regulatory offenses in the public welfare, and the level of punishment thereunder, in discussing principles of statutory construction where there has not been a clear expression of legislative intent as to whether guilty knowledge is an element of a crime. But in response to Chicone and Scott v. State, 808 So. 2d 166 (Fla. 2002), the Florida legislature clearly expressed its intent in section 893.101, Florida Statutes, by stating that "knowledge of the illicit nature of a controlled substance" is not an element of an offense under chapter 893, and that instead lack of such knowledge is an affirmative defense. That provision has been upheld in other cases upon due process challenges. See e.g. Harris v. State, 932 So. 2d 551 (Fla. 1st DCA 2006). The appellant's due process challenge is likewise without merit.

AFFIRMED.

HAWKES, C.J., and ROBERTS, JJ., CONCUR.