

[Cite as *State v. Finch*, 2010-Ohio-4393.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23441
vs.	:	T.C. CASE NO. 08CRB12454
MEGAN L. FINCH	:	(Criminal Appeal from Municipal Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 17th day of September, 2010.

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GRADY, J.:

{¶ 1} Defendant, Megan Finch, appeals from her conviction and sentence for unauthorized use of property.

{¶ 2} Defendant was an employee of the Fifth Third Bank branch office located inside the Kroger store on Brandt Pike in Dayton. Almost every day, Defendant got her lunch from the Kroger deli

and took it back to the bank location. On August 4, 2008, Defendant went to the deli area of the Kroger store and ordered a salad and popcorn chicken. The deli clerk gave Defendant those items. Defendant failed to pay the clerk at that time, as she normally would, because the clerk immediately walked away and began helping another customer. Defendant was on her cell phone at the time, arguing with her roommate, and became distracted.

{¶ 3} Gary Davis and Cheryl Berry, who are security officers for Kroger, observed Defendant walk away from the deli area with the salad and popcorn chicken in her hand. Defendant walked past the cash registers at the front of the store and went into the bank without paying for the items she was carrying.

{¶ 4} After several minutes, Defendant came out of the bank, purchased a can of soda pop at the self-service register, and re-entered the bank and began consuming the food. When questioned by Davis and Berry, Defendant acknowledged that she did not have a receipt for the salad and chicken she was eating. Defendant indicated that she simply forgot to pay for it.

{¶ 5} Dayton police were called and Defendant was subsequently charged by complaint filed in Dayton Municipal Court with one count of petty theft in violation of R.C. 2913.02(A)(1), a misdemeanor of the first degree. On February 20, 2009, the matter was tried to the court. Defendant testified in her own behalf that she became

distracted and simply forgot to pay for the salad and chicken. The trial court found Defendant not guilty of petty theft, but guilty of the lesser included offense of unauthorized use of property, R.C. 2913.04, a misdemeanor of the fourth degree. The trial court immediately sentenced Defendant to ten days in jail, all of which was suspended, and fined Defendant one hundred dollars plus court costs. Defendant paid the entire fine and court costs that day.

{¶ 6} On May 6, 2009, Defendant filed a notice of appeal to this court. By our Decision and Entry filed on July 8, 2010 and July 27, 2010, we determined that Defendant's appeal was timely.

{¶ 7} Although Defendant's appellate brief contains no statement of the assignments of error or issues presented for review, which App.R. 16(A) requires, Defendant appears to contend that her conviction is not supported by legally sufficient evidence and is against the manifest weight of the evidence because she did not "knowingly" take the salad and chicken without paying for them, but rather was distracted and absentmindedly forgot to pay for them.

{¶ 8} In *Dayton v. Elifritz*, Montgomery App. No. 19603, 2004-Ohio-455, at ¶4, this court stated:

{¶ 9} "It is well settled that 'where a criminal defendant, convicted of a *misdemeanor*, voluntarily satisfies the judgment

imposed upon him or her for that offense, an appeal from the conviction is moot unless the defendant has offered evidence from which an inference can be drawn that he or she will suffer some collateral legal disability or loss of civil rights stemming from that conviction.' *State v. Golston*, 71 Ohio St.2d 224, 226, 1994-Ohio-109, citing *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236, and *State v. Berndt* (1987), 29 Ohio St.3d 3."

{¶ 10} The record in this appeal contains no motion by Defendant in either the trial court or this court seeking a stay of execution of her sentence, and no journal entry granting such a stay. The jail time the court imposed was suspended. Defendant voluntarily satisfied the court's judgment and her sentence in this case by paying the fine and court costs in full on the day of trial, February 20, 2009. Furthermore, we find nothing in the record to suggest that Defendant may suffer some collateral legal disability or loss of civil rights as a result of her misdemeanor conviction. Under these circumstances, we sua sponte dismiss the present appeal as moot. *Elifritz*.

Appeal Dismissed.

DONOVAN, P.J. And FAIN, J., concur.

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Hon. John S. Pickrel