

[Cite as *State v. Brinson*, 2009-Ohio-5040.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22925
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-2712
v.	:	
	:	
KIMBERLY P. BRINSON	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 25<sup>th</sup> day of September, 2009.

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MATHIAS H. HECK, JR., by KELLY D. MADZEY, Atty. Reg. #0079994, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
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Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Kimberly Brinson appeals from her conviction of assault in violation of R.C. 2903.13(A). Brinson was convicted pursuant to her guilty plea. She was sentenced by the trial court to a community control term of five years and she was

ordered to pay restitution to her victim, the City of Brookville, and Miami Valley Hospital.

{¶ 2} The facts underlying the offense are set out in the pre-sentence investigation report and are not in dispute. Ms. Brinson stabbed her husband, Edward Brinson in the chest on July 8, 2008. Brinson was transported to Miami Valley Hospital in Dayton by the Brookville Fire Department emergency ambulance. Edward Brinson was billed \$939.55 by the City of Brookville for the service, and he received a bill of \$6,976.50 from Miami Valley Hospital for his hospitalization.

{¶ 3} Ms. Brinson argues the trial court erred in ordering her to pay restitution to the City of Brookville and Miami Valley Hospital because they are not victims of her criminal conduct.

{¶ 4} The State concedes that the trial court erred in ordering Ms. Brinson to pay the restitution to the City of Brookville and Miami Valley Hospital because they are not proper payees under R.C. 2929.18. The State argues that Ms. Brinson has waived her right to object to the amount of these restitution orders because she did not object to the trial court's order and the trial court's order must be reviewed on a plain error analysis. The State argues that the trial court should remand the matter to the trial court only to determine the proper payee.

{¶ 5} We agree that Appellant has waived her right to contest the amount of restitution ordered. See *State v. Bobo*, Montgomery App. No. 2102, 2006-Ohio-4147.

{¶ 6} R.C. 2929.18(A)(1) provides:

{¶ 7} "Restitution by the offender to the victim of the offender's crime or any

survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or *to another agency designated by the court.*" (Emphasis added.)

{¶ 8} The plain statutory language indicates that there are four possible payees to whom the trial court can order the defendant to pay restitution. *State v. Bartholomew*, 119 Ohio St.3d 359, 361, 2008-Ohio-4080. The fourth category of payee, *another agency designated by the court*, at a minimum consists of entities that "paid the victim for the economic loss caused by the crime." *Id.* At ¶ 12 (i.e., crime victims' reparations fund). An economic loss is "any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income \* \* \* any property loss, medical cost, or funeral expense \* \* \* ." R.C. 2929.01(L). Therefore, trial courts have not abused their discretion if restitution is ordered to another agency that paid for any loss of income, property loss, medical cost, or funeral expense suffered by the victim in a crime. See, *Bartholomew* at ¶ 17, R.C. 2743.72(E).

{¶ 9} The Twelfth District Court of Appeals has held that medical providers are not included within the ambit of permissible third-party payees. *State v. Baker*, Butler App. No. CA 2007-06-152, 2008-Ohio-4426 at § 56. We agree with that conclusion. The trial court could however order that Kimberly Brinson make restitution to Edward, who incurred the obligation to pay the City of Brookville and Miami Valley Hospital. This order could be enforced by the trial court as a condition

of Ms. Brinson's probation. The Appellant's assignment of error is Sustained, the judgment of the trial court is Reversed, and the matter is Remanded to the trial court for further proceedings.

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FAIN and FROELICH, JJ., concur.

Copies mailed to:

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Hon. Dennis J. Langer