**CAPTION:** **STATE V. BORGER**

**04-05-23**

APPEAL NO.: C-220191

TRIAL NO.: 21CRB-18004

KEY WORDS: UNAUTHORIZED USE OF A VEHICLE – R.C. 2913.03(A) – AFFIRMATIVE DEFENSE – 2913.03(C)(1) – RESTITUTION

SUMMARY:

Defendant failed to establish by a preponderance of the evidence a reasonable-mistake defense as codified in R.C. 2913.03(C)(1): defendant’s mistaken belief that he was authorized to use the motorcycle was unreasonably premised on two anonymous individuals gifting defendant the motorcycle as they were discarding it on the side of the road.

The trial court did not abuse its discretion when it awarded the motorcycle-owner victim restitution to cover the cost of repairing the motorcycle where victim testimony and pictures showed that the motorcycle was modified when it was in defendant’s possession and those modifications were consistent with the unauthorized use of the motorcycle in violation of R.C. 2913.03(A).

JUDGMENT: AFFIRMED

JUDGES: OPINION by BOCK, J.; ZAYAS, P.J., and BERGERON, J., CONCUR.