

[REDACTED]

the consequences of a waiver. Indicative of the defendant's failure to consider the consequences of his statement is the defendant's response to the question, "Did you know that [the victim] was 13 years of age?" The defendant answered, "No, I thought she was 12...."

In addition to the transcript, there was expert testimony that the defendant could not read and that he did not understand the *Miranda* warnings. The State introduced no expert testimony which indicated that the defendant did understand his rights. The testimony of the two police officers that the defendant understood his rights was based on the conversation for which we have a transcript. Our reading of the same transcript indicates that the defendant did not knowingly and intelligently waive his *Miranda* rights.

■ ■ For the foregoing reasons, we hold that the defendant did not knowingly and intelligently waive his *Miranda* rights, and that the defendant's statement was improperly admitted during trial. The burden of establishing that error in a criminal proceeding is harmless beyond a reasonable doubt rests on the State. *State v. Scarlett*, 118 N.H. 904, 907, 395 A.2d 1244, 1246 (1978). The State has failed to prove that the admission of the defendant's statement constituted harmless error.

*Reversed and remanded.*

All concurred.

[REDACTED]

Rockingham  
No. 82-308

ATHERTON'S FURNITURE

v.

RAYMOND L. HALPERIN,  
TAX ASSESSOR, MAINE BUREAU OF TAXATION & a.

December 8, 1982

[REDACTED]

[REDACTED]

*John R. Maher* and *John J. Coffey*, of Portsmouth (*Mr. Maher* on the brief, and *Mr. Coffey* orally), for the plaintiff.

*James E. Tierney*, attorney general for the State of Maine (*Clifford B. Olson*, assistant attorney general for the State of Maine, on the brief and orally), for the defendants.

#### MEMORANDUM OPINION

The State of Maine seeks to impose upon the plaintiff, a business located in Portsmouth, New Hampshire, a use tax for tangible personal property which the plaintiff sold to residents of the State of Maine. The plaintiff filed a petition for declaratory judgment in the Rockingham County Superior Court asserting that the Maine tax law violated the commerce clause of the United States Constitution. U.S. CONST. art. I, § 8. The State of Maine filed a motion to dismiss based, in part, upon *forum non conveniens*. The Master (*Charles T. Gallagher, Esq.*) recommended and the Superior Court (*Contas, J.*) approved the dismissal of the petition.

■ ■ We conclude that the factors set forth in *Leeper v. Leeper*, 116 N.H. 116, 354 A.2d 137 (1976), were properly considered and balanced by the master. These factors are: the private interests of the litigants, the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining the attendance of willing witnesses, the enforceability of a New Hampshire judgment, and other concerns relating to the public interest. *Id.* at 118, 354 A.2d at 139 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). We see no reason to doubt the ability of our sister State's judiciary to decide properly a question of federal constitutional law.

*Affirmed.*