

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0039, State of New Hampshire v. Daniel Barnes, the court on June 10, 2004, issued the following order:

The defendant's motion to reconsider scope of remand is granted. The slip opinion dated April 16, 2004 is modified as follows: The second to last paragraph of the slip opinion is deleted and replaced by the following paragraph.

On remand, the trial court should order a new trial if the records exist, unless the State proves that the defendant's inability to use the records in the first trial was harmless beyond a reasonable doubt. See Amirault, 149 N.H. at 545. We cannot presently determine whether the trial court's error was harmless beyond a reasonable doubt because the existence and content of the records are unknown.

Broderick, C.J., and Nadeau, Dalianis, Duggan and Galway, JJ., concurred.

Eileen Fox,

Clerk