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ECKER, J., concurring in the judgment. I respectfully disagree with the majority opinion to the extent that it adopts and applies the harmless error analysis set forth in *Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993). See *id.* (new trial is mandated if instructional error “had substantial and injurious effect or influence in determining the jury’s verdict” (internal quotation marks omitted)). For the reasons explained in part II of Justice D’Auria’s concurring opinion in this case, I would instead apply the standard articulated in *Neder v. United States*, 527 U.S. 1, 18, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). See *id.* (new trial is required unless it is “clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the [instructional] error”). Accordingly, I join part II of Justice D’Auria’s concurring opinion. I nevertheless concur in the judgment because, applying the *Neder* standard, the state has met its burden of establishing harmless error on this record. See footnote 1 of Justice D’Auria’s concurring opinion.

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