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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

No. 31,661

5 **ISAAC LEE,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

8 **Robert A. Aragon, District Judge**

9 Gary K. King, Attorney General

10 James W. Grayson, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Robert E. Tangora, L.L.C.

14 Robert E. Tangora

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **FRY, Judge.**

19 {1} Defendant appeals his conviction of second degree murder. He argues that

20 because forensic pathologist Dr. Ross Reichard supervised but did not perform the

1 autopsy on Victim, his testimony about the autopsy and the cause of death violated
2 Defendant's right of confrontation. Because Defendant failed to object to Dr.
3 Reichard's testimony and because defense counsel sought admission of the autopsy
4 report, we hold that Defendant waived his argument. We therefore affirm Defendant's
5 conviction.

6 **BACKGROUND**

7 {2} We do not provide a detailed summary of the factual and procedural
8 background because the parties are familiar with the case and because this is a
9 memorandum opinion. Suffice it to say that Defendant, Casey Jim, and Kevin Jim
10 were involved in an altercation with Victim, who died as a result of stab wounds and
11 blunt force trauma. A jury convicted Defendant of second degree murder.

12 **DISCUSSION**

13 {3} Defendant acknowledges that he did not object to Dr. Reichard's testimony in
14 any way. However, he maintains that he cross-examined Dr. Reichard and elicited the
15 fact that Dr. Reichard did not actually perform the autopsy but instead merely
16 "oversaw" the autopsy. He contends that it was fundamental error for the district
17 court to allow Reichard to testify to the details documented by the physician who
18 actually performed the autopsy. Fundamental error occurs when permitting a
19 conviction to stand would result in a "miscarriage of justice." *State v. Barber,*

1 2004-NMSC-019, ¶ 17, 135 N.M. 621, 92 P.3d 633 (holding that fundamental error
2 “has been used both to describe cases with defendants who are indisputably innocent,
3 and cases in which a mistake in the process makes a conviction fundamentally unfair
4 notwithstanding the apparent guilt of the accused”).

5 {4} In this case, Dr. Reichard testified about the various injuries found during the
6 autopsy of Victim. He opined that the cause of Victim’s death was multiple sharp
7 force injuries and blunt force injuries. On cross-examination, Dr. Reichard testified
8 that he supervised the autopsy, which was performed by a forensic pathology fellow.
9 Defense counsel questioned Dr. Reichard about various diagrams and notations in the
10 autopsy report. Counsel then stated that he would like the autopsy report to be made
11 an exhibit and admitted. Thus, the statements in the autopsy report—which Defendant
12 now claims were erroneously admitted in violation of his right to confront the maker
13 of those statements—were admitted at the behest of Defendant himself.

14 {5} Assuming without deciding that admission of Dr. Reichard’s testimony about
15 the autopsy report was problematic, Defendant’s arguments on appeal are unavailing.
16 “A party cannot preserve an argument for error regarding the admission of evidence
17 that the party introduced.” *State v. Anaya*, 2012-NMCA-094, ¶ 36, 287 P.3d 956.
18 Indeed, “[a]cquiescence in the admission of evidence . . . constitutes waiver of the
19 issue on appeal.” *State v. Campos*, 1996-NMSC-043, ¶ 47, 122 N.M. 148, 921 P.2d

1 1266. Further, “[t]he doctrine of fundamental error cannot be invoked to remedy the
2 defendant’s own invited mistakes.” *Id.* “[T]o allow a defendant to invite error and
3 to subsequently complain about that very error would subvert the orderly and
4 equitable administration of justice.” *State v. Handa*, 1995-NMCA-042, ¶ 35, 120
5 N.M. 38, 897 P.2d 225 (alteration in original) (internal quotation marks and citation
6 omitted). Because the autopsy report was admitted at Defendant’s request, Defendant
7 has waived any objection he might have had to Dr. Reichard’s testimony about the
8 contents of that report.

9 **CONCLUSION**

10 {6} For the foregoing reasons, we affirm Defendant’s conviction.

11 {7} **IT IS SO ORDERED.**

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13

CYNTHIA A. FRY, Judge

14 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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LINDA M. VANZI, Judge