

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO MATA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66355

**FILED**

**SEP 28 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In this appeal, Francisco Mata argues that his conviction should be reversed because the district court erred in (1) denying Mata's motions for substitution of counsel without holding a hearing on the matter, (2) not declaring a mistrial sua sponte after Mata told the jury that his attorneys made up his testimony, (3) not applying the marital privilege to Mata's sister-in-law's testimony, and (4) issuing several jury instructions over Mata's objections.

We conclude that the district court did not abuse its discretion in denying Mata's motions for substitution of counsel because (1) he failed to establish that a sufficient conflict existed, (2) the district court conducted an adequate inquiry into the problem, and (3) he made his first motion on the first day of trial. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004).

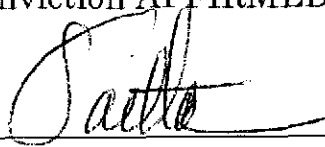
We conclude that the district court did not abuse its discretion in not declaring a mistrial sua sponte after Mata stated on the stand that his attorneys made up his testimony. During a lengthy discussion, the district court (1) considered the opinions of the parties on how to proceed,


including Mata's statement that he did not want a mistrial, (2) considered several alternatives to a mistrial and chose the one that was least harmful to Mata's rights, and (3) acted deliberately instead of abruptly in deciding not to declare a mistrial sua sponte. *See Glover v. Eighth Judicial Dist. Court*, 125 Nev. 691, 709-10, 220 P.3d 684, 697 (2009).

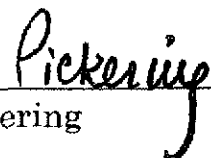
We conclude that the district court did not err in not applying the marital privilege to prevent Mata's *sister-in-law* from testifying, because the marital privilege only applies to spouses. NRS 49.295(1)(b).

Finally, we conclude that the district court did not err in giving several jury instructions over Mata's objections because the challenged instructions were appropriate and contained correct statements of Nevada law. *See Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008) (holding that we review a district court's rulings on jury instructions for an abuse of discretion, but review whether an instruction is a correct statement of law de novo). Accordingly, we<sup>1</sup>

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.

Saitta  
  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

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<sup>1</sup>Mata's cumulative error argument fails because the district court did not err. We have considered the parties' remaining arguments and conclude that they are without merit.

cc: Hon. Valerie Adair, District Judge  
Coyer Law Office  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk