Episode 141 - The Murder of Donna Hernandez

Shaun It was seven o'clock in the morning, October six, nineteen ninety nine. A speeding car passed an unmarked Metro police car heading south on US ninety five. Officer David Swoboda gave chase and eight miles later, the car finally pulled over to Swoboda's surprise. The driver stepped out of the car, distraught and crying. He raised his hands and said, just shoot me. Just kill me. In the back seat, a three year old girl was crying hysterically.

John The driver was Fernando Hernandez. He told Swoboda that he'd had a fight with his ex wife. A records check revealed a protective order in Clark County. The little girl's mother, Donna, had sought protection from the man now standing beside the highway. Swoboda. Immediately concerned, requested that officers visit Donna's home to check in on her. When he returned to the little girl, Anna, she told him, daddy hurt mommy real bad. That morning would have been Donna and Fernando's eighth wedding anniversary.

Shaun Hi and welcome to Sins and Survivors, a Las Vegas true crime podcast where we focus on cases that deal with domestic violence as well as missing persons and unsolved cases. I'm your host, Sean.

John And I'm your co-host, John.

Shaun Today we're telling the story of Donna Hernandez, a thirty eight year old mother who worked as a clerk at Clark County Family Court here in Las Vegas. By October of nineteen ninety nine, Donna had been divorced for about a year. She and her former husband, Fernando, shared a three year old daughter, Anna, and although their marriage had ended, his threats had continued. Donna had reported those threats. She had obtained a protective order and that order was still effect on the morning we just described. But before we return to what happened that day, let's talk about Donna's life.

John Donna was born on April thirteen, nineteen sixty one, in Albuquerque, New Mexico. Her obituary also identified her as having gone by Kathy. Her parents were Annie and Toby Griego. She had a sister, Barbara, and two brothers, Toby and Twan. By nineteen ninety nine, Donna had lived in Las Vegas for about nine years. Her parents and her brother Toby also lived here while Barbara Antoine still lived in Albuquerque. Donna and Fernando married on October six, nineteen ninety one, and in February of nineteen ninety six, their daughter Anna was born. But to understand the marriage Anna was born into, we need to go back further. According to Donna's mother, Annie Griego, Donna and Fernando had met at a friend's house. Fernando had very little money and spoke very little English. He worked as a cook at Sam's Town Hotel and Casino. Annie told the Las Vegas Review-Journal that Donna took Fernando into her home, taught him English, paid for his adult education classes, and even bought him a sports car. Those details give us a glimpse into how much Donna had put into their life together, but according to her family, the relationship began to deteriorate shortly after they got married. Annie described a marriage in which Fernando controlled even ordinary errands. She said Fernando wouldn't let Donna go shopping unless he went with her. And if Donna did go with her mother, she had to bring back every receipt and account for the exact change. The abuse she described also included physical violence. Annie said Donna had told her that Fernando had slapped her because she hadn't dressed their baby quickly enough. And in an application for a protective order, Donna described another incident in her own words. She said one time he pushed me down in the house because I didn't put down the carpet powder on the carpet before I vacuumed. It's shocking to think about these ordinary, everyday moments getting your child dressed, cleaning the house, going shopping. In the accounts Donna and her mother gave, Fernando responded to these everyday events with controlling behaviour and violence. The newspaper, citing quotes from family members and family court records, also reported slaps marks on Donna's neck, described as strangle marks and threats that she wouldn't survive much beyond the finalization of their divorce. If we've learned anything by reporting on these stories, it's that quotes like this are all too common in hindsight.

Shaun That's so true. In this case, Donna literally left a written record of how frightened she had become. In another protective order application, she wrote, I am very scared of my ex-husband. I feel that my daughter and I need to be protected. Fernando, as you might expect, denied the abuse allegations in court documents. He claimed Donna was accusing him of violence so she could obtain permanent custody of Anna. Donna's efforts to get protection against him spanned years, according to the review Journal. She obtained seven temporary or extended protective orders over a four year period. She also went to Las Vegas Metro Police at

least five times to complain about Fernando. The article reported that some of the physical assaults Donna had described hadn't been reported to the police. But there were other occasions when she did ask for help, and the records described repeated problems getting it. In September nineteen ninety eight, Donna asked the police to accompany her while she changed the locks on her home. According to the newspaper's account, the cops never even showed up. That same day, Donna alleged, Fernando came through a window and threatened her with a screwdriver. Then in September, she also contacted police after Fernando failed to return Anna on time under their visitation arrangement set by the family court. This one is also in the written record. She wrote I called Metro when I got home and they told me to file a report. I went down to the metro office and they would not take a report. They said I had to get a temporary protective order. So Donna was trying to secure her home. She was trying to have the arrangements for her daughter enforced, and she was putting all of this into writing, asking the authorities for help. By October nineteen ninety eight, their divorce was final. Anna was still only two years old. Since they shared a daughter, of course, the divorce didn't end their contact, and the months that followed brought more threats and more attempts by Donna to get help.

John After the divorce, Anna lived with Donna. Fernando was allowed to have her from eight a m on Wednesday morning until five p m on Friday afternoons. During the period surrounding their separation and divorce, Donna also had a roommate, Francisco Landeros. He rented a room in her home from late August through the middle of December nineteen ninety eight. According to his testimony, they were friends. Their relationship was not romantic. While he lived there, Francisco heard messages Fernando left on Donna's answering machine where he insulted her, calling her a whore and a fool. Francisco testified that on a couple of occasions, Fernando even threatened to kill her. On these recordings in November, just a month after their divorce, Donna described the ongoing terror she was experiencing during a recorded family court proceeding. Fernando wanted to take Anna on a vacation to Mexico. She told the court, he tells me all the time I'm a bad mother and that he's going to take my child away from me. I am afraid of him. In January of nineteen ninety nine, Donna reported yet another threat to Metro. She said that when she went to pick up Anna, Fernando told her that he would make her very sorry that he was going to take their daughter to Mexico. The officer who received that report described on it as being very upset and fearing for her safety and for the safety of her daughter. By that point, Donna had expressed those fears, both in court and explicitly on the record, to police. Then in March, there was another confrontation, this time with Francisco present.

Shaun Francisco no longer lived with Donna, but one evening that March he gave her a ride home from work. Fernando was waiting outside her workplace in his car, and according to Francisco's sworn testimony, Fernando drove towards his pickup, forcing him to pull aside to avoid being hit. When they got to Donna's place, she opened the garage and Francisco drove inside and they attempted to close the garage door. As it was coming down, Fernando drove underneath it, causing it to open again. Just a note here that this is how the court documents describe what happened. But in the RJ, Fernando is described as having rammed the garage door. So in the end it's likely a combination of both with him driving under the door so that it couldn't close and damaging it. After he did this, Fernando then got out of his truck and tried to assault Francisco. Francisco restrained him and Fernando pleaded to be released so he wouldn't get in trouble with the cops. Fernando let him go. But once he did, Fernando got back into his car and the threat started right back up. He threatened to kill Francisco and then he told him, you're going to die. Dogs. Later that same night, Fernando called Donna's mother three times. During those calls, he threatened to kill Donna. He also said he had money in Mexico and he would take Anna there to raise her. And claimed Donna was an unfit mother. The Review-Journal reported that this incident on March twenty fourth resulted in a misdemeanor disorderly conduct charge. Shockingly, according to police quoted in that article, it was Fernando s only arrest in connection with the case before Donna's murder. None of the other documented threats resulted in him being arrested. Donna obtained another protective order immediately after that round of confrontation and threats, and later had it extended through April thirteenth, two thousand. On paper, that protection would last another year, but the order still left Donna and Fernando with a shared daughter and the conflict over Anna wasn't close to over.

John It's worth pausing for a second here, because saying she got a protection order can sound like a single simple step. But what would she have actually had to do to get that protection? Under Nevada law, at the time, the process began with a verified application. A written account she formally affirmed was true. She needed to give the court specific facts showing that domestic violence had happened, or that there was a threat of them happening. That meant describing the actual conduct that she wanted protection from. At the

time, the law allowed the court to act on threats. She didn't have to wait for another physical attack. She could apply without an attorney. Court staff were required to provide information and help with the application paperwork, although they couldn't provide any legal advice. The law also deferred the initial costs and fees, so paying those upfront wasn't supposed to prevent someone from asking for protection. The first part could move really quickly. The court had to rule on a temporary order application within one judicial day. A judge could grant that temporary protection without first notifying Fernando or hearing his response, but that initial order only lasted generally no more than thirty days. Applying for an extended order while it was active could keep the temporary protection order in place until the hearing. Longer protection required another stage and notice to Fernando and then a hearing on the application at that time. An extended order could last up to one year.

Shaun For someone in Donna's position, seeking longer protection meant being prepared to explain to the court why it was needed, with the other person being allowed to respond. We can't assume Fernando attended every hearing, but the process allowed him to challenge the request. There was also the question of Anna. Nevada law allowed protection orders to address temporary custody, and an extended order could set visitation arrangements, including supervision, by another person when necessary. So protecting a parent and arranging a child's contact with the other parent could become part of the same proceeding. The court could decide all of those things at one time during that proceeding. Then there was the problem of enforcement. By nineteen ninety seven, Nevada law required these orders to direct police to arrest. When an officer had probable cause to believe a protective order had been violated. The officer didn't have to personally witness that violation. Donna did all the right things, taking concrete steps to get protection through the courts, but making that protection effective still depended on Fernando obeying the restrictions and on the authorities responding when he didn't.

John In the spirit of offering resources to the listeners, we also thought it was important to talk about what that process would look like today. Here in Nevada, the basic structure is still the same. You submit an application explaining the abuse or threats, and a judge can issue a temporary protection order without notifying the other person first. And longer protection requires notice and a hearing. The significant change is how long those orders can last. Today, a temporary DV protection order can generally last up to forty five days, compared to thirty at the time of Donna's case. An extended order can now last up to two years compared with one. And those are maximums. The judge determines the duration, and an order lasting more than a year requires a factual finding. Explaining why. There are also more ways to begin the paperwork in Clark County. You can use a guided online application that asks questions and creates the forms for you. You can submit them electronically or file them in person. The court's instructions say that the initial hearing with the judge is generally conducted by phone.

Speaker 3 And if you're listening.

Shaun And wondering where to start, you don't have to figure out the paperwork alone. In the Las Vegas area, the Family Law Self-Help center can explain the application process and help you find the forms. Call seven hundred and two four five five one five zero zero and press two. Or you can visit the center in person at six hundred one North Pecos Road staff members are available Monday through Friday eight to four, excluding holidays will include the application guide in our show notes. Remember also that you can apply without an attorney. You can also speak with a domestic violence advocate before deciding what to do. An advocate can help you think through a safety plan, including concerns about housing, children and what could happen when the other person learns about the order. For listeners elsewhere in the United States, the National Domestic Violence Hotline can help connect you with local resources. Call eight hundred seven nine nine seven two three three, or you can text the word start to eight eight seven eight eight or chat online at thehotline dot org. The rules and deadlines vary by state. If you're in immediate danger, call nine hundred eleven. And if someone monitors your phone or your internet browsing, try to reach out using a device that they can't access. You don't need to have every answer before asking for help.

John Back to Donna. In April, Fernando accused Francisco of sexually molesting Anna. Child Protective services investigated and the allegation was found to be completely groundless. Even though there was absolutely no evidence for that ugly accusation, that allegation later became part of the evidence presented by Fernando's defense, as did testimony suggesting that he and Donna had spent time together in the weeks before her death. A friend said that Fernando repeatedly talked about wanting Donna back. That same friend

had seen them together in Fernando's car a couple of times during the month before the murder, and that one's really hard to verify. But all we know is that the claim was actually made by that friend. Anna's preschool director recalled seeing Donna and Fernando together at the preschool just days before Donna died. She was surprised because she knew they didn't get along. Those sightings don't establish that they had reconciled or that Donna's fear had gone away. All they established was that the two were still in contact, which isn't very surprising given that they had a daughter together. Then there was another threat from Fernando about two weeks before her murder. He told a friend that he wanted to kill Donna, Anna and himself. According to the testimony, he had been drinking when he said it. The court didn't establish whether that warning ever reached Donna. What we do know was that Donna had already reported threats, sought protective orders, and told a judge that she was afraid of him. There were also recordings from her answering machine with these threats. On October fifth, at nine thirty two at night, her caller ID recorded a call from Fernando's telephone. The court established the time of the call, but not what was said by the following morning. The protective order, remember, was still in effect. Then, as we mentioned in the opening around seven a m, Fernando's car passed an unmarked police car heading south on ninety five with three year old Anna in the back seat.

Speaker 3 The officer.

Shaun David Svoboda, switched on his emergency lights and followed. Fernando's car reached ninety six miles an hour, and it took about eight miles before Svoboda was able to get him to stop. When Fernando got out, he was crying. He raised his hands and told the officer to shoot me. Just kill me. He then walked around to the passenger side of the car and said, I'm sorry, baby. Svoboda handcuffed him inside the car. Anna was strapped into her car seat, crying. He tried to calm her before returning to Fernando to get his identification. That was when he noticed cuts on Fernando's face and hand. When he asked what had happened, Fernando said he'd fought with his ex-wife. Svoboda checked his information through the police records, and Donna's protection order came up. The order we've been talking about was still active, and Fernando was standing beside the highway with several injuries, describing a fight with the woman it was supposed to protect, Svoboda called and asked dispatch to send officers to Donna's house. Detective Tom Allen arrived to assist at the highway stop. Swoboda left him with Fernando and went back to check on Anna in the car. This time he noticed blood on the seat near her and she was still crying. She told him daddy hurt mommy real bad.

John Fernando smelled of alcohol and failed a roadside sobriety test. The officers arrested him for driving under the influence. He asked to kiss Anna goodbye and they allowed it. Afterwards he began saying, I killed them, I killed her. Swoboda then advised him of his Miranda rights. Detective Allen also noticed that Anna had blood on her pajamas. She told Detective Allen that her father had hurt her mother on the stairs, and that they were going to Mexico. Back in Las Vegas, Officer James churches arrived at Donna's home to check on her, and no one answered the door. He looked through a window and saw a woman lying on the stairwell landing. She was partially clothed and he could see a substantial amount of blood. Officer Kerry Roush forced the door open and they found Donna on the stairs leading to the second floor with a broken knife beside her, and she had no pulse. Those details come from the officer's later testimony along the highway. Anna had described her father hurting her mother on the stairs and at the house. Officers found Donna there, just as Anna described. While Fernando was being taken away into custody and Anna was in the officer's care. Police began the task of investigating her mother's death.

Shaun As investigators examined Donna's house, they found no sign of forced entry. Before the officers broke through the door. The rest of the home appeared largely undisturbed. That didn't establish how Fernando had entered, but it was one detail investigators documented. It's also important to know that some outlets have reported or implied there was evidence of forced entry into Donna's home, but evidence in a later document from the Nevada Supreme Court has firmly established. The only forced entry was from the police. The broken knife beside Donna was a kitchen knife with a serrated blade about seven and a half inches long. Investigators also found blood elsewhere in the house, including around the kitchen sink. The autopsy established that Donna's cause of death was strangulation, multiple stab wounds, cuts and blunt force injuries to her head also contributed to her death. She had bruises across her body and face and defensive wounds on her hands. The medical examination also revealed a separate injury involving sexual penetration with a knife. The medical examiner believed that the injury most likely occurred postmortem, and that horrific fact became the basis of a separate criminal charge. The scene and the medical findings gave investigators evidence of the attack beyond what Fernando and Anna had said beside the highway. The laboratory results would provide further connections between Fernando the weapon and Donna.

John When Detective Thomas Towson interviewed Fernando, he offered an account involving Francisco Landeros. He said he'd been at Donna's house the night before when Francisco arrived. He described Francisco as her boyfriend and said they'd fought, after which Fernando took Anna and left. Landeros told investigators again that he and Donna had not been romantically involved, but that they were friends and he had rented a room from her following her separation. A palm print on the knife handle was identified as Fernando's. Testing found both Fernando's and Donna's blood on the blade. Fernando's blood was also identified on floors inside the house. Donna's blood was on the ring Fernando was wearing when he was arrested, and both parents blood was found on Anna's pajamas. None of the tested item contained Landeros blood, and as far as we know, he didn't have any injuries at all. And of course, he obviously wasn't present. A neighbor, Ramon Paz, also reported seeing Fernando's car parked in Donna's driveway sometime between five thirty and five forty five that morning. By the time the case reached trial, Fernando's lawyers acknowledged that he had killed Donna. Their argument would concern only the degree of murder. They asked the jury to find him guilty of second degree murder rather than a premeditated first degree killing.

Shaun That distinction carried enormous consequences. By December nineteen ninety nine, prosecutors had announced that they would seek the death penalty against Fernando. His trial would determine whether the case could proceed to a decision about his execution. His attorneys, David Shike and Christopher Oram, pushed a second degree murder defense. They acknowledged that Fernando had killed Donna while challenging the prosecution's case for first degree murder. To support their argument, they called witnesses who had seen Donna and Fernando together. Shortly before her death, Anna's preschool director recalled seeing them together just days earlier. a friend testified that Fernando had spoken about wanting Donna back. The defense also pointed to what remained at Fernando's house after his arrest, his passport and Anna's birth certificate. Witnesses who collected his belongings had seen no indication that he had been packing to leave. His lawyers used that testimony to challenge the idea of a planned murder, followed by an escape to Mexico. The prosecution presented three grounds for a first degree murder charge. One, a deliberate, premeditated killing. Two, a killing committed during a burglary or kidnapping, and three, murder by torture. That means the jury had several legal grounds to consider alongside the defense's argument for a lesser conviction.

John The jury also heard evidence of Fernando's earlier threats. Donna's friend Francisco described hearing those messages on Donna's answering machine, where Fernando threatened to kill her. Another witness, of course, described Fernando threatening to kill Donna, Anna and himself shortly before the murder while he was drunk. Then, during the prosecution's rebuttal, jurors saw Donna herself in a particularly damning videotaped interview from a family court proceeding in November of nineteen ninety eight. In that recording, Donna described Fernando repeatedly telling her she was a bad mother and threatening to take Anna away from her. She told the court, I'm afraid of him. That one hit particularly hard because her words had been recorded while Donna was still trying to resolve their custody disputes through the courts, and now they were being presented at the trial for her murder. After a three day trial before District Judge Sally Laurer, the jury returned its verdicts on Friday, July fourteen, two thousand. Fernando was found guilty of first degree murder with the use of a deadly weapon, burglary while in possession of a weapon, second degree kidnapping and unlawful sexual penetration of a dead human body. The defense's request for a second degree murder conviction had been outright rejected. Jurors did find him not guilty of a separate sexual assault charge while convicting him of the offense involving Donna's body after her death. Those were separate charges with different verdicts. There's an important distinction in that first degree murder verdict. The prosecution had given the jury three different legal grounds for reaching it. Like we said, the first one was premeditated murder, that Fernando acted with deliberate, premeditated intent to kill Donna. The second was felony murder, which is a killing committed during certain other serious crimes. In this case, the prosecution pointed to burglary and kidnapping as possible underlying felonies. The third was murder by torture, which required proof of a calculated intent to inflict pain beyond the killing itself. And the burglary charge needs some explanation, because burglary doesn't necessarily mean entering a house to steal something. The court explained that entering Donna's home with the intent to murder her or kidnap Anna could constitute burglary. He didn't have to force his way inside, even if Donna had allowed him in, entering with that criminal intent could still meet the legal definition of burglary. The jurors unanimously found Fernando guilty of first degree murder, but their instructions did not require them to agree unanimously on which of the three theories supported that verdict, and the verdict form did not identify which theory or combination of theories they accepted. So we can say that, yes, he was convicted of first degree murder. We can't say that the jury specifically selected premeditation, felony murder or torture as its basis. That distinction would become really important when the

courts later reviewed his sentence and appeal. After the verdicts, the jurors were excused until Tuesday, July eighteenth, when they would return for the penalty phase. Their next responsibility was to determine his punishment. Before making that decision, they heard from Donna's family and Anna's therapist, and they also heard from witnesses called by the defense to ask that Fernando's life be spared. We're going to pause here for a really quick break, but we will be right back.

Shaun When the penalty phase began on July eighteenth, Donna's family described to the jury what she meant to them and what her murder had done to the people who loved her. Donna's brother Toby, told the jurors how the murder had affected his young niece, Anna. He was living with his parents and Anna at that time, so he was a witness to the effects on her daily. Anna was afraid of being alone. She was afraid of the dark over and over. She wanted to make sure the doors were locked. He also described what he saw as the impact on the rest of his family. His father seemed to have aged. His mother's nerves were shattered. His surviving sister had become withdrawn. He told the court that Donna's murder had torn his own life apart. The reporting described relatives crying as they testified, and Fernando cried as he listened to what they had to say. Donna's mother, who was now raising Anna, gave the jury more detail about her granddaughter's life after the murder, Anna cried frequently. She wanted her mother, especially at night, and she wouldn't sleep alone. Her grandmother described the houses in Anna's drawings houses without doors or windows. She explained that she drew them that way because she did not want anyone to be able to get inside. Specifically, she said she didn't want her father coming in. She also described Anna acting out elements of the attack with her dolls. The jury then heard from Linda Cavazos, Anna's therapist. Cavazos recalled that at their first appointment after Donna's death, Anna was extremely emotional and frightened. She couldn't talk about her mother without crying. In closed spaces, without a nearby door or window frightened her. Two Cavazos diagnosed Anna with post-traumatic stress disorder. Their testimony described how the murder continued to affect Anna's sleep, her play and her ability to feel safe at home. Deputy District Attorney Robert Dasko reminded the jury of the protection that Donna had sought. As the Las Vegas Sun reported, he told them the police protective orders and family court judges could not protect her, and he asked them to impose the death penalty.

John The defense, of course, asked the jury to spare Fernando's life. His brother, his friends, his co-workers described him as hard working, helpful and devoted to his daughter. He testified about his steady employment and the affection they had seen between him and Anna. Fernando also addressed the jury in an unsworn statement in an effort to convince them to spare his life. He apologized for his crimes and said he loved his daughter. The jurors found seven mitigating circumstances. Those are factors they considered in his favor. Those included his lack of significant criminal history, his employment record, the fact that he was intoxicated, his extreme emotional disturbance, his acceptance of responsibility, and that he expressed remorse. They also counted the fact that he had spared Anna's life after threatening to kill her. As far as aggravating factors, the jury found three the burglary, the sexual penetration associated with the murder, and the torture and mutilation. Ultimately, they found that the aggravating circumstances far outweighed the mitigating circumstances. They began deliberating on Wednesday afternoon, July nineteenth, and returned their decision just a day later on Thursday, July twentieth. They returned the decision that Fernando Hernandez would receive the death penalty. The formal sentencing followed on September twenty eighth, when judge Sally Laurer imposed the death sentence selected by the jury. As with every case where the death penalty is given, there was an automatic appeal.

Shaun That first automatic appeal is only one stage of the process. A defendant can also seek what is called post-conviction relief. In Nevada, that can involve a petition for writ of habeas corpus, which is a legal challenge to the validity of the conviction or sentence. Those proceedings can address questions such as whether the defendant received constitutionally adequate representation from his lawyers. There can also be review in federal court. Generally, the state courts first have an opportunity to address the federal claims. Federal habeas review operates under strict limits, though, including substantial restrictions on overturning decisions the state courts have already made. These stages have different rules about what claims can be heard and when they must be filed. A defendant can't just demand an unlimited series of new trials, and overturning a death sentence doesn't necessarily overturn the murder conviction. A court might order a new penalty hearing or replace the death sentence with life without parole, leaving the finding of guilt in place. Keep that in mind with Fernando's case, a challenge to his conviction and a challenge to his punishment could have very different consequences.

John Fernando's first appeal included a challenge involving something that we haven't mentioned before and seems innocuous. A gift for Anna. After the guilty verdicts, two jurors and an alternate went shopping for Anna and bought her clothing. One of them had a daughter around Anna's same age and helped with the sizing. But the trial was still underway and the two people buying the gift would help decide whether Fernando lived or died. Judge Laurer learned about the purchase as penalty deliberations began. She instructed the jurors to set the gift aside, then waited until after they returned the verdict to question the two sitting jurors. The alternate had already been excused. The concern was whether their sympathy for Anna had compromised their impartiality, whether arranging the gift had involved discussing the case. Outside of the formal deliberations, the jurors strongly denied discussing the case. They said their conversation had been about clothing sizes and, as one explained what would be cute on her and what we thought was cute. The defense requested a mistrial at the time, but Judge Laurer accepted the jurors account and denied the request. The question of whether that gesture toward Anna had deprived Fernando of fair sentencing decision would later become an issue on appeal. In their ruling, the Nevada Supreme Court concluded that the record showed that the jurors were expressing sympathy for Anna and it didn't establish prejudice against Fernando and that the gift didn't justify overturning the outcome. He also challenged the kidnapping conviction, arguing that Donna's death made him Anna's sole legal custodian so he couldn't kidnap his own daughter. Keeping in mind, of course, that he was the reason for this having murdered her mom, the court rejected that argument and said that killing Donna didn't make taking Anna lawful. His actions violated the protective order, the custody decree, and criminal law. So on August second, two thousand and two, the Nevada Supreme Court upheld his convictions and his death sentence.

Shaun Fernando continued challenging the outcome. On March twelve, two thousand and three, he filed a petition for a writ of habeas corpus. The district court held an evidentiary hearing and he was denied relief again, and as you might be expecting, he appealed that decision as well. When the Nevada Supreme Court ruled on October thirtieth, two thousand and eight, it removed one of the three aggravating circumstances burglary. That change came from another later Nevada death penalty case, McConnell versus state, which was decided in December of two thousand and four. The court ruled that prosecutors couldn't use the same underlying felony in both cases burglary, both to establish felony murder and also as an aggravating circumstance to support the death sentence. We're going to cover McConnell's case and the reasoning behind that decision in the swing shift this week. For Fernando, the connection was this his jury might have used burglary to reach its first degree murder verdict, and then counted that same burglary again when deciding his punishment because the verdict didn't identify the murder theory. The court couldn't rule that out as a possibility. His jury had returned its verdict four years before that McConnell ruling. It didn't identify which of the three murder theories it accepted, but because burglary might have supplied the basis for felony murder, the court couldn't count it as an aggravating circumstance supporting their decision to levy the death penalty. His burglary conviction remained intact. What changed was whether that burglary could also be used to justify his execution. So that left two aggravating circumstances the sexual penetration and the torture or mutilation. The majority weighed those remaining circumstances against the mitigating evidence. It concluded beyond a reasonable doubt that the jury would still have found Fernando eligible for death and imposed that sentence anyway. One justice disagreed. The dissent considered the mitigating evidence substantial enough that the court could not be certain the jury would have reached the same decision. If that justices decision had prevailed, the Supreme Court likely would have ordered a new penalty hearing. But the majority's ruling controlled so Fernando's death sentence remained in place. In September two thousand and nine, he began a federal habeas corpus case, moving his challenges into another court system.

John Fernando's federal habeas case began on September eighteen, two thousand and nine, just about ten years after the murder, and it remained in district court for more than fifteen years. During that time, his attorneys revised his petition, and the proceedings paused while he returned to Nevada courts to present additional claims. In twenty fourteen, the Nevada Supreme Court upheld the rejection of his second state petition as untimely. The federal proceedings then resumed again in twenty fifteen. For the next decade, Fernando's legal team continued challenging his convictions and death sentence in federal court. They revised his petition and argued over which claims in evidence the judge could consider keeping the case moving through the courts until the district court's decision in March twenty twenty five, when federal Judge Miranda Du denied Fernando's request to overturn his conviction and death sentence. She did allow him to appeal six issues, including whether his trial lawyers had adequately represented him. She also concluded that some reasonable judges could disagree about those questions.

Shaun Fernando then asked judge due to reconsider, but on January five, twenty twenty six, she denied that request. More than twenty six years after Donna's murder, his convictions and death sentence remained in place. The judge had rejected his challenge while leaving certain issues open for further appeal. As of October twenty twenty six, Nevada's prison records list Fernando Hernandez as sixty three years old, incarcerated at Northern Nevada Correctional Center. His death sentence remains active. The records also show that his burglary and kidnapping sentences have been discharged. Each carried a term of six to fifteen years. He still has a separate life sentence for the other charge, with the possibility of parole after fifteen years. That last detail can be confusing, though parole eligibility on one conviction doesn't mean he can leave prison when he's still under a death sentence.

John But whether Nevada will actually execute him is an entirely different question. Nevada hasn't carried out an execution since April of two thousand and six, more than twenty years ago. In September of twenty six, Fox five reported that drug shortages and litigation continued to block executions. Prosecutors had sought execution dates for three other prisoners earlier that year, then paused the requests in July because of pending litigation. So executions remain legally possible, but we can't say when they might resume or whether Fernando will ever be executed. We'll have more to say about the wider topic of the death penalty and the swing shift episode. So make sure you're subscribed on Apple Podcasts or Spotify, and you can visit podcasts to sign up. The passage of time doesn't erase his death sentence or automatically convert it to another punishment unless a court overturns it or it's formally reduced, it's going to remain in force. If it remains unchanged and an execution never happens, he'll remain imprisoned for the rest of his life. I think that brings us back to Donna and to something so positive that was created in her memory. Donna's house officially opened April fourth, two thousand and two. Family Court Judge Diane Steele and Assistant Court Administrator Christina Chandler had worked more than a year to help bring that program into existence. It began as an actual house, a converted ranch style home where children could spend time with a parent under supervision or be dropped off and picked up for visitation. The setting offered families an alternative to arranging those visits in police stations, restaurants and other public places. The program also addressed a particular danger after a relationship ends. Shared custody can require repeated contact between parents when there have been threats or violence. Exchanging a child can become another opportunity for confrontation. At the original Donna's house, Arrivals and departures were staggered. One parent waited while the other brought the child inside, and there was another waiting period before departure. The intention was to prevent contact and prevent one parent from following the other. A large portrait of Donna embracing Anna hung in the main room at the opening. Judge Steele said, we want her face to shine on anyone who comes into this facility.

Shaun The program continues today as Donna's House central at the Family Court and Services Center on North Pecos Road in Las Vegas. It provides two services. Supervised visitation allows a child to spend time with a parent while staff observe supervised exchanges provide oversight during the handoff between parents. There are also rules intended to protect the children emotionally. Parents cannot question them about the other parents activities, discuss the court case or make derogatory comments about the other parent staff, remain within sight and hearing during the visits and can end a visit if a child is at risk or becomes unduly stressed for listeners who might need these services. Access requires a court order through the Clark County's eighth Judicial District. You can call Donna's house at seven oh two four five five four two two nine or email at. D h c at Clark county dot us to ask about the required order and the intake process. Under the current rules, all adult parties must complete orientation within thirty days of the court order. Visits or exchanges are scheduled only after both parties finish that orientation and scheduling depends on availability. The current base fees are forty dollars an hour for supervised visitation and twenty dollars per exchange. Fees can be reduced based on verified income and household size. We'll include the official website and contact information in our show notes. Donna's house cannot give Anna back the years she should have had with her mother, but through this program, Donna's name remains connected to practical work that helps protect other children and families.

John And if you're listening, outside of Southern Nevada, similar services exist elsewhere. New Mexico's courts have a safe exchange and supervised visitation program. In Florida, the ninth Judicial Circuits Family Ties program offers supervised visits and monitored exchanges. And those are just two examples. If your family needs this kind of support, you can ask your local family court or your attorney about supervised visitation and supervised exchange services. The supervised visitation network also has an online directory

where you can search by location, and we will link that in our show notes. Availability fees and requirements vary, and you can ask whether a provider can meet your court orders requirements and whether its staff have training relevant to domestic violence or child abuse, if those are concerns in your case. Donna's story brings us back to why these services matter. Ending a relationship doesn't necessarily end contact when there are children involved. Families may still have to navigate custody orders, visitation and regular exchanges. When someone says they're afraid of a partner or former partner, that fear deserves to be taken seriously, and children's safety needs to remain a priority throughout the process. Donna's house is one community's response to that need. Wherever you live, it's worth knowing what support exists and asking what happens when families cannot get the protection they need. Because what happens here happens everywhere. Thanks for listening. Visit censored dot co. Subscribe for exclusive bonus content and to listen ad free. Remember to like and follow us on Instagram, Facebook, TikTok and threads at sins and survivors. If you're enjoying the podcast, please leave us a review on your podcast platform of choice. You can contact us at questions at sins and survivors dot com.

Shaun If you or someone you know is affected by domestic violence or need support, please reach out to local resources or the National Domestic Violence Hotline. A list of resources is available on our website. Sins and survivors dot com. Sins and survivors. A Las Vegas True crime podcast is researched, written, and produced by your host, Sean and John. The information shared in this podcast is accurate at the time of recording. If you have questions, concerns, or corrections, please email us. Links to source material for this episode can be found on our website, Sins and survivors dot com.

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