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Gone in a Flash

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### Author

Williams, Kathryn Marylee

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**Kathryn Marylee Williams**  
UC BERKELEY GRADUATE SCHOOL OF JOURNALISM  
AUDIO CONCENTRATION THESIS:  
“GONE IN A FLASH”

**ABSTRACT:**

Homer Marciniak was the victim of a home invasion and assault early in the morning on July 5, 2010. About 10 hours later, Marciniak died of a heart, which set in motion a criminal investigation and legal case that went to federal court. The story highlights prosecutorial discretion because in state court the defendants weren't charged with murder for Marciniak's death, but when the case went to federal court, prosecutors charged the defendants with second-degree murder. The murder charged carried a mandatory life sentence if found guilty.

**ACT 1:**

*DRAPERINTERVIEW\_1: “I think it was a standard holiday weekend... nothing out of the ordinary, prior to this.”*

**{MUSIC}**

*DRAPERINTERVIEW\_2: “Hello my name is Todd Draper. I'm a Lieutenant with the Medina police department”*

**My interview with Todd was in building called “City Hall.” We're in the former council chambers, at a wooden table with enough room for Todd's file folder,**

**{PAGES TURNING SOUND}**

**black police issued radio,**

**{RADIO NOISE}**

**and his Lipton Diet Citrus Green tea.**

*DRAPERINTERVIEW\_: “I have a citrus tea and push on till lunch.”*

**Todd works for the *Village* of Medina Police Department. Medina's in Western New York right between Buffalo and Rochester about 6,000 people live here. The village is a square: on the inside, quaint family homes with front porches; on the outside edges, flat-factories line two-lane roads. The further out you go, the more farmland and apple orchards you run into.**

**So we're here to talk about a crime Todd responded to seven years ago. This crime was unusual for Medina, and the case would grow into something even more controversial.**

**But it started with a phone call from Todd's girlfriend around five in the morning on July 5th.**

*DRAPERINTERVIEW\_*: "when my girlfriend called I just assumed something was wrong. I remember as soon as I saw the caller id before I even answered RADIO, I was rapidly accelerating to get over there assuming the worst that something was going on. for her to call me in the middle of the night, that rarely happened.

*DRAPERINTERVIEW\_* "when I answered the phone, she said somebody is knocking at the door. I looked out the window, I think it might be Homer."

**Homer Marciniak, a 77-year-old bachelor, was his neighbor. They lived right across the street from each other on Mead Avenue.**

*DRAPERINTERVIEW\_*: "...So she saw him as he was walking away because nobody answered the door. And he was en route to the neighbor's house to knock on their door when I pulled up.

**Homer lived alone in a simple, unassuming, white house. The intruders cut his phone line, and he didn't have a cell phone, which was why Homer ended up knocking on Todd's door.**

*DRAPERINTERVIEW*: "He had a white T-shirt on and he had underwear on. Um, and no shoes so that was the first thing that I noticed."

**He tried asking Homer some questions. But getting information wasn't easy because Homer had a speech impediment.**

*DRAPERINTERVIEW*: "...he would always carry a pad and pen around"

**{sounds of Medina}**

**I wanted to know more. So I started looking for photos of Homer. I only found one. Homer was maybe in his mid-twenties, wearing his uniform from the service station he worked at. His face square, glasses horned rimmed, and smile slightly off kilter. In all honesty, he looks like he didn't want his photo taken and resigned to someone else's will.**

**Most people in Medina knew Homer because they saw him riding his vintage Harley Davidson, which he kept in pristine condition.**

*CROWLEY*: "He loved his motorcycles"

*MOTOROCYCLE*: "... Well it was his first Harley"

*GRABOWSKI: "He use to sit straight up in that thing and you hear that \* noise \* when he's shifting those gears"*

**But, for a lot of people, the motorcycle is about as much as they know. Homer is described as shy, a characteristic some link to his speech impediment.**

*Crowley: "I use to go down to the bar and have a drink, but Homer didn't socialize like that..."*

**Homer had friends. But the ones I talked to didn't have any deep insights. They basically all said the same thing.**

*Grabowski: "Homer, he was one of the nicest people, I've never seen him mad..."*

**{sonic transition}**

**A nice, friendly old man, in a simple house, in a tiny village -- it all left the police wondering why this happened?**

*Grabowski: "...I think that naïve-ness that he had is what got him in trouble."*

**So Homer, the man in his underwear, waited in the police car while Todd called an ambulance and his patrol partner.**

**Jose Avila was also on the midnight shift, and he got there shortly after Todd.**

*JOSEINTERVIEW\_FULL: "July 5th I remember it and it was supposed to be the hottest day of the year and it was it was like 102 degrees here in Medina. It was really hot."*

**He had been the police chief more than a decade at this point and hands-on, to put it lightly.**

*JOSEINTERVIEW\_FULL: "I took every crime every issue every situation in this town and this community as personal... "I couldn't imagine what poor Homer went through that evening, and to know that his priceless comic book collection had been stolen"*

**Let me repeat that, "His priceless comic book collection had been stolen." That's why Homer Marciniak's house was broken into.**

*DRAPERINTERVIEW\_: "At approximately 0400 hours Marciniak woke up.."*

**Todd's reading his police statement. He dug it out of the case file.**

*DRAPERINTERVIEW\_CONT: "and got out of bed to use the bathroom as he approached his second story bedroom doorway and unknown person wearing a mask struck him in the face causing him to fall to the ground. The subject tied a T-shirt around*

*his face and instructed him not to move... Marciniak estimated that subjects were in his home for approximately 15 to 20 minutes.”*

**Homer was at the hospital while cops combed over the house. Todd and Jose were up all night, and couldn't rest, not yet. It was all about trying to figure out who did this.**

*JOSEINTERVIEW\_FULL\_: “I immediately thought the possibility of outsiders coming in because this was not common. But I reached out to my informants. Some I had to pay 20 bucks you know whatever. And they all tell me the same thing. No I didn't hear about it. But I'll check I'll call you back. And you know you get phone calls an hour or two later, no nothing.”*

**The police needed Homer to help piece together what exactly happened. When he got back from the hospital, the cops took Homer upstairs to the bedroom -- where he had been assaulted.**

*DRAPERINTERVIEW: “It was kind of overwhelming, he just went thru this traumatic incident. Had just been to the hospital and been treated for injuries and now was coming back to the scene where this occurred and the whole time having to answer questions about it almost having to relive it.*

**Maybe it was being hit in the face, maybe it was his prized possessions being stolen, whichever, Homer was clearly upset.**

**And he wasn't breathing right. They brought him downstairs, gave him a glass of water, and sat him down on the couch.**

**Around 11 a.m. they send him back to the hospital.**

*JOSEINTERVIEW\_FULL\_: “It became apparent to us that something was physically happening to him that wasn't right and he needed to get back to the hospital that was his personal well-being then became more important to me solving the case, which was way out. So I realized it looked like Homer is more important than me solving this.”*

*JOSEINTERVIEW\_FULL\_3: “I thought that maybe later on I could interview him but that never materialized. He died,”*

**On July fifth, around 2 p.m. of a heart attack.**

**So the investigation changed, Todd and Jose weren't just looking into a break-in and assault, it was now a suspected murder.**

*JOSEINTERVIEW\_FULL\_: “...He would have lived I have no doubt in my mind that he would have been there July 6 had he had not had this thing done to him this terrible crime,”*

**The police only had one solid lead: the comic book collection.**

*DRAPERINTERVIEW\_* “They weren't like DC marvel comics. They were unique comics and many of them were military themed. And he would have them in you know plastic protective sleeve.”

**Homer had about 400 antique comic books valued around 50,000 dollars, according to the Medina police report. Some guns, cash, and jewelry were also taken but nothing worth as much as the comics.**

**He was a collector of things, not just comics. Homer never threw away anything, but not in a pack-rat kind of way. He was selective and appreciated every item.**

*JOSEINTERVIEW\_FULL\_*: “It wasn't the monetary value of those magazines or those books or those comic books that really meant something to Homer I think that they were just his something that he had purchased over the years and to him it was his, his child you know that's what I think.”

**Jose and Todd knew what they had to do: Find the comic books, find the criminals. And it wasn't just the Medina cops working the case; they called in other departments. But it was personal for these two men.**

*JOSEINTERVIEW\_FULL\_CONT*: “And that's the other thing to this whole case that you know you're there with someone for an hour or two and then they're dead because of selfish people. It's you know it stays with you.”

**So, they followed leads on their own time, outside of work.**

*JOSEINTERVIEW\_FULL\_*: “I would look through the papers and try to find some antique store or antique dealer or something that and I grabbed my wife and son and we would jump in the car and this Sunday whatever we would go there and of course I'd be looking for someone selling comic books or anything along the lines of what was stolen out of Homer's house.”

**Todd and other law enforcement went to comic book stores in cities near Medina.**

*DRAPERINTERVIEW*: “what does it feel like as an officer, particularly in a village like Medina, to have a case like this go cold? Um, honestly it sucks”

*DRAPERINTERVIEW* “yeah that three months, as the days and weeks and eventually months started going by, I honestly did not think we would develop info that would lead us to solve the case...”

**But then in October, three months after the home invasion, Jose's phone rang in the middle of the night.**

*JOSEINTERVIEW\_FULL: "This phone call was the best phone call I got in a long time. I mean, you could have called me and told me that I won a million dollars I would rather had this phone call than that."*

## **ACT 2**

**It was the Rochester police station. There was a woman in custody who mentioned something about "the old man who died in Medina." The Rochester police officer knew enough to call Jose.**

*JOSEINTERVIEW\_FULL: "I got in the car. I didn't even have my gun belt my badge nothing my wallet nothing. And I raced it 100 miles an hour to Rochester. I mean I was that excited that something maybe I always knew that this is how we were going to solve this."*

**This was the "break" Jose was waiting for.**

*JOSEINTERVIEW\_FULL: "When I spoke to her at the Rochester Police Department within a minute I said this baby's this baby is ours."*

**In a few days, everyone involved with the home invasion was rounded up.**

**But, in this case, being "involved," didn't necessarily mean breaking into Homer's house. It didn't even mean being in Medina during the break in**

**Rico Vendetti, a middle aged, bespectacled, Rochester entrepreneur, wasn't in Medina that morning.**

*JOSEINTERVIEW\_FULL: "I, I call him the puppet master"*

**Rico paid people to steal the comic book collection, effectively bankrolling the operation. But here's the thing, the cops never figured out how Rico learned about the comics, but they thought it started with an appraisal or sale.**

*JOSEINTERVIEW\_FULL\_: "Homer went to Rochester with a list of comic books and from there someone learned about Homer having those antique comic books"*

**This wasn't Rico's only illicit operation. He also ran a shoplifting ring. It worked like this, he paid people to steal things, like thumb drives or breast-milk pumps, from stores. Then turned around and sold those items online.**

*CARDONEINTERVIEW: "We realized that it was more than a single arbitrary home invasion and it was more of an organized crime ring."*

**Joe Cardone is the district attorney for Orleans County, which includes the village of Medina.**

*CARDONEINTERVIEW: "If the facts warrant somebody being convicted then I'm gunna be balls out trying to do that..."*

**He's been the DA in Orleans County for more than 20 years. He's prosecuted a lot of cases.**

*CARDONEINTERVIEW: "I'll go to state conferences of other district attorneys and they'll say 'Joe what do you have in the water up in Orleans county cause you guys have some pretty strange situations.'"*

**And Joe took the same approach to this case as he does to all of them.**

**Research and prosecute. That's what Joe does.**

### **ACT 3**

*CARDONEINTERVIEW2: "...Clearly what had happened to him in his home was what ultimately resulted in him having a heart attack and dying. I mean that would be a logical position for anybody to take."*

*CARDONEINTERVIEW1\_: "The indictment is dated Nov. 15, 2010-against arlene combs, donald griffin, juan javier, albert parsons, trisha sauber, terry stewart, rico vendetti and timothy williams..."*

**These eight were charged with: Burglary, Assault, and Grand Larceny. Not murder. Joe didn't think he could prove it beyond a reasonable doubt.**

*CARDONEINTERVIEW\_: "I had learned that earlier in the week he was having apparently chest pains or some type of complication and that was well before the home invasion occurred so was his heart attack something that was coming on? [FADE DOWN] you know was he having some health problems where this would have happened anyway? then, what really made it murkey water for me was the fact that after he had been assaulted and law enforcement and medical officials responded to the scene and took him to the medina hospital there was a fairly extensive work up done in terms of checking him all out, you know was his heart okay? had experienced any types of small heart attacks or anything like that? And you know you have a medical doctor who decided to release him"*

**Here's what Joe knew:**

**First, Homer had a history of heart problems. According to court documents, less than two weeks before the break in, Homer visited his doctor complaining of shortness of breath.**

**Second, after getting stitches, the hospital deemed Homer healthy enough to leave. His heart checked out. And he didn't die until around 2 p.m. that afternoon.**

**Third, an autopsy, performed the day after Homer's passing, ruled the cause of death undetermined. And, finally, a review of the case read quote "the appropriate manner of death is natural." end quote.**

**But, and there's always a but, the final review also read, quote, "although there was likely a contributory role, that the causality could not be stated within a reasonable degree of medical certainty," end quote. Meaning the burglary and assault maybe played some role in the heart attack, but it couldn't be proven.**

*CARDONEINTERVIEW: "That was a hard decision because I think anybody looking at it and didn't require much legal training to have that opinion and would think that, 'wow this man's home was broken into and he was assaulted early in the morning of July 5th and he was dead.' And why wouldn't that constitute murder?"*

**This wasn't where the case ended though.**

**Remember how Rico ran a shoplifting ring? Well he wasn't just selling to people in New York State. He shipped goods all over the country, and that's important because across state lines means across jurisdictions.**

**Joe could only prosecute crimes in New York State. So, he contacted the U.S. Attorney's Office.**

**It moved up to federal court, and this was considered a Racketeering case. If you don't know what Racketeering is watch a mob movie. It's basically organized crime. Rico's shoplifting ring fell under that definition.**

*HERBINTERVIEW: "It was not a case that should have been prosecuted federally. It was not a federal case. I thought it was stupid to do that but that was my opinion."*

**Herbert Greenman is a criminal defense attorney from Buffalo, New York. He represented Donald Griffin.**

*HERBINTERVIEW\_ : "...his case was the wrong place at the wrong time..."*

**The shoplifting ring was why this case went federal, but racketeering or organized crime wasn't the only charge.**

**Donald, along with Rico, and two others were charged with second-degree murder. Second-degree murder, in this case, translates to these four people helped commit the crime that "caused" Homer Marciniak's death.**

*HERBINTERVIEW\_ : "If a jury could find that his act was a link to the causation of the person's death that that would be sufficient for a jury to find someone guilty of a homicide. So you can see the standard was pretty low in a case like this because it would be easy for a jury to say. Well what he did ultimately was the link..."*

**Donald admitted to hitting Homer during the break-in.**

**Life in prison without parole was the mandatory sentence if found guilty of murder. Life meant life.**

**Now, the facts of Homer Marciniak's death didn't change, just the court system and the prosecutors pursuing the case. Herb, the lawyer you just heard from, struggled with a key questions. Did the break-in and assault cause Homer Marciniak death and was it provable beyond a reasonable doubt?**

*HERBINTERVIEW\_*: "If Mr. Marciniak had been a healthy man he certainly never would have died from what happened from being sort of slapped in the face."

*HERBINTERVIEW*: "Well the law is anything but black and white... I'm not a doctor who can look at to get an x ray and see that the bone is broken. Pretty easy to do that. We don't have X-rays and the practice of what we have is a lot of subjectivity...there is no right and wrong what works is what's right and what doesn't work is wrong."

**The U.S. Attorney's Office lined up a medical expert willing to testify that the break-in and assault caused the heart attack.**

*HERBINTERVIEW\_*: "We were very worried that out of this case that that there was a potential that a jury would have found him guilty and he was looking at a life sentence. You know, Aside from the death penalty, that's the most serious sentence you can get, there's nothing more serious and to think that a young man his age could be spending the rest of his life in jail, which is pretty horrific..."

**So imagine trying to argue this case. Donald hit Homer Marciniak, an elderly man with a bad heart. Homer died 10 hours later.**

*HERBINTERVIEW\_*: "It's not exactly you know a case where the jury is going to be enamored with the people who did it. What I was going to have to do was to humanize my client by giving a lot of background information as much as I could get in and to let them know that this was an unfortunate set of circumstances but not a case where he should be punished to the extent that a murder conviction would carry..."

**Life in prison was a risk. So, Herb advised Donald to take a plea deal. In fact, all seven defendants took pleas. {pause} This case never went to trial.**

**Donald, and Rico each got 20 years in federal prison, admitting guilt to various offenses. But Donald was the only one with murder attached to his sentence.**

*HERBINTERVIEW*: "When it became definitive that he was going to take a plea. I think the shock of it, it just hit him all of a sudden and he broke down. When we first started talking about it did it look like that's what we're going to do. And for the first time he

*cried pretty hard and showed his emotions he had not shown a lot of emotions up until that point. But then he realized a good part of his life was going to be set to be spent in jail. And I think he came to that realization and I think it hurt a lot more than he thought it was going to hurt.”*

**So, this whole thing started with a break-in to steal a comic book collection, and it ended with a murder charge that was never proven.**

*HERBINTERVIEW: “Do I believe in my heart of hearts that I have a young man serving 20 years in jail who really doesn't deserve to be in jail for 20 years? Pretty much I do believe that. But he you know he was in the federal system in the federal system was a very difficult sometimes harsh system of justice but it is what it is.”*

**Yes, people broke the law. But how much did they break the law and which laws did they break? In this case, it depends who you talk you.**

**The folks that knew Homer--and some that didn't--believe this was murder.**

*RichardCrowley\_: “He died from people robbing his house...”*

*Grabowski\_: “And after he had that heart attack, that broke my heart cause Homer would still be alive today if that didn't happen. I know he would.”*

*ANCELINTERVIEW: “You know I understand that he had a heart attack but as far as I'm concerned, uh, they still killed him. Every other day he'd be up here walking around. So I mean he he was healthy and I'm sure if it hadn't been for the beating he took he'd be alive today.”*

**There wasn't a jury-trial and verdict to decide if this was murder. The plea deals potentially rescued those charged from life in prison. They just had to give up 20 years.**

## **CREDITS:**

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**Music by David Szesztay, Jahzzar, the Losers, Blue Dot Sessions, Podington Bear, and April.**



**SOURCE LIST:**

- Jose Avila, former Medina Police Department chief
- Lt. Todd Draper, Medina Police Department
- Joseph Cardone, District Attorney Orleans County
- Herbert L. Greenman, defense attorney
- Fredrick Rarick, defense attorney
- James Grabowski, Medina resident – Vietnam veteran
- Richard Crowley, Medina resident
- Richard Broughton, University of Detroit Mercy Law School Associate Dean for Academic Affairs
- *USA v. Vendetti, et al.* – court documents
- Rochester Democrat and Chronicle, “Arrests made in July Home Invasion” by Ernest Lamothe Jr.
- FBI Buffalo field office
- Rochester Democrat and Chronicle, “Man Arrested after FBI search of Rochester businesses” by Gary Craig
- Medina Police Department police records
- *State of New York v. Arlene Combs, et al.* – Indictment
- New York State Penal Law