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How Sheila Berry Got Her Case on 48 Hours



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In 1999, Sheila Berry, a Wisconsin-based paralegal and investigator found herself fascinated with a story on the news. As a result, she spent years working on the John Maloney case, a police officer accused of killing his wife.

Berry's book, *Full Circle*, attracted CBS News 48 Hours. Here is the remarkable story.

In 1999, when a Green Bay jury found one of its own police officers guilty of murder, the town's core values were rocked. The officer, John Maloney, was sentenced to life in prison for killing his wife and setting her on fire.

"Sometimes, I still wake up in the middle of the night and realize, look around, and come back to reality that I am in this place. I don't belong in here," says Maloney, who denies committing the crime.

Maloney has spent years in prison, His claims of innocence might have rung hollow if there weren't so many troubling questions about his case.

Sheila Berry, an Appleton, WI paralegal and investigator had doubts also. Berry just happened to be listening to the news when she heard about the case. Berry is a part-time novelist, part-time investigator, and part-time head of Truth in Justice, a non-profit group that tries to help people it feels are wrongly imprisoned.

According to 48 Hours' website story about the case, Maloney says the key to understand what happened is to understand his wife, Sandy. Matt, the Maloney's oldest child of three, says his family began crumbling in the early 1990s, when Matt, the Maloney's oldest

child of three boys, says his family began crumbling in the early 1990s, when Sandy developed a serious addiction to prescription drugs.

Her friends enable her, providing drugs for her if she couldn't get the pills herself.

Things were so extreme that if the three kids needed medication, the pharmacist would make them take the pill in the store to make sure Sandy wouldn't steal it. But that didn't work.

Matt recalls his mother telling him to slip the pill under his tongue and keep it there until they left. Matt would then spit it out and Sandy would take it. Matt commented that when looking back, he can't believe someone would do that, "especially your own mom."

"But Sandy's situation was complicated by depression, panic disorder and alcohol. Matt says they found vodka bottles around the house causing a fight among them. It was a terrible time for the family. Lola Cator, Sandy's mother, discovered Sandy's charred body lying face down on the couch after the fire. Cator blamed Maloney for her daughter's death. Cator thinks Maloney hated Sandy because she was taking too long with the divorce. At this point,

Maloney had a new, much younger girlfriend, a 28-year-old IRS agent named Tracy Hellenbrand. Cator believed that Sandy was getting in the way of their new life and went to the house to kill her.

Special Prosecutor Joe Paulus shared Cator's certainty, and told the jury that Maloney was under stress, deeply in debt, and desperate to get out of the relationship.

Paulus told the jury that Maloney went to Sandy's house that night to make sure that she'd be in court the next day. They argued, and Paulus says Maloney hit Sandy over the head with a blunt object; the wound bled onto her shirt.

Paulus said Maloney then panicked and strangled Sandy, putting his knee in her back as she lay on the couch. The medical examiner bolstered Paulus' case, concluding that Sandy probably had been strangled, and saying that he had found trauma to her neck.

After discarding the bloody shirt in a hamper in the basement, Paulus theorized that Maloney set the couch on fire – leaving behind half-smoked cigarettes to make it look like an accident.

The most damning evidence came from the Lady Luck Hotel in Las Vegas. Five months after Sandy's death, Maloney had flown there for a weekend with girlfriend, Tracy Hellenbrand.

"I don't even know why I even went out there," recalls Maloney. "I guess that's one of the foolish things that people do that think they're in love," Maloney is quoted on the 48 Hours website.

What Maloney didn't know was that his girlfriend had a change of heart and was now secretly working with prosecutors who were still looking for concrete evidence against Maloney.

The hotel room was wired, and a video camera was hidden in a clock radio. Cops watched closely from next door. Hellenbrand's job was to get Maloney to confess. For hours, she asked him over and over again, "Did you kill Sandy? Did you?"

Maloney denied he had killed his wife until he appeared to incriminate himself by admit-

ting he was at Sandy's house the night she died.

"That videotape showed a man confessing to the crimes that he committed," says Paulus on the website. The tape also shows a man with an uncontrollable temper, something that Maloney admits that he is "not proud of."

However, prosecutors had heard enough and they arrested Maloney that same day.

The trial lasted eight days. The guilty verdict was read to a packed courtroom which included Maloney's young sons.

According to 48 Hours, "They took us in a back elevator and I just fell on the floor and started crying my eyes out," Sean recalls. "I can remember saying, 'What are we gonna do now?'"

Appeals can take years, but then Sheila Berry, who had never even met Maloney, took up his cause. After consulting with more than a dozen forensic experts, Berry was convinced that Maloney was innocent, and that Sandy Maloney wasn't murdered. She believes that there was no crime.

So how did Sandy die? Berry says the explanation is right there in the evidence - evidence the jury never saw.

Behind his back, courthouse reporters dubbed Paulus "Hollywood Joe," for his love of the camera, and for his dramatic courtroom theatrics.

"He'd get right up there, and he would act things out. His eyes are very dramatic and he knows how to use them," says Berry, who worked for Paulus in 1990. "Any attorney would be happy to have those skills, because they can skate you across a lot of thin ice."

"Matt recalls his mother telling him to slip the pills under his tongue until they left. Then, he spit it out and she took it."

But thin ice was the last thing Paulus had to worry about in 1998. Assistant District Attorney Mike Balskus says Paulus' career was on a fast track: "His goal was to become one of the U.S. attorneys in Wisconsin. The Maloney case would probably be a good vehicle for that."

After the guilty verdict, Paulus said: "Ultimately, the jury paid heed to what I talked to them about in my closing argument – and that is, we all know what the truth is here, don't get sidetracked. Just let the truth flourish so we can get to the right verdict."

Over the next few years, Paulus missed few opportunities to wax idealistic about truth and justice. But in March 2002, the FBI began investigating Paulus for corruption, looking into charges that the prosecutor was taking bribes to fix cases.

Paulus maintains his innocence and says he did nothing wrong.

News of the FBI inquiry came as no shock to Berry, who'd had a run-in with Paulus years earlier when he was her boss. It involved allegations that a star witness had lied, but Paulus was able to keep the matter quiet, stay out of trouble and fire Berry.

"Several people in law enforcement urged me to leave the state," says Berry. "Said, 'He hates you. He is afraid of you. He is going to set you up on false criminal charges.' I knew he could do it."

But in April 2004, Paulus' world of influence and power came tumbling down. He was charged with bribery and income tax evasion. Within weeks, he had cut a deal, pleading guilty to accepting \$48,000 to fix 22 cases – six of them criminal. Paulus is serving a sentence of more than four years at a federal prison in Florida.

The Paulus bribery investigation covered June 1998 through June 2000 – the time period when Maloney was arrested, tried and convicted. Did the corrupt district attorney act improperly in the Maloney case as well?

In one of two ongoing investigations, Balskus collected boxes of documents, examining more than 100 of Paulus' past cases.

Balskus says a zeal to "get" Maloney might have led to manipulating evidence, like the key videotapes used in Maloney's case. Paulus had sent the hours of tape to a private, outside company, supposedly to cut them down for time, not alter the content.

There was a \$27,000 editing bill, and a note from Paulus to the editor saying: "I have replaced modified or added new excerpts to be included in the tape." There was also an editor's note that said: "Some of your clips are so short – one and a half seconds in duration – that they may seem choppy."

Was there any editing done that could be considered doctored? Vince Biskupic, co-prosecutor, claims that was not possible. He believes that Maloney probably was hurt more by his actions on the tape than by his words. Still, Balskus wonders to what lengths Paulus went to win this case.

Does Balskus think that Maloney got a fair trial? He doesn't know but believes it is clear that not all the evidence was presented to the jury.

Not only does Berry believe that Maloney did not kill his wife, she's convinced that Sandy caused her own death.

She says the evidence was in the basement of the Maloney house, where police recorded a bizarre scene: two VCRs on top of a coffee table. And from the ceiling, there appeared to be a ligature hanging from a conduit pipe, right down in front of the coffee table.

The autopsy showed that Sandy was very drunk the night she died. Berry thinks Sandy tried to hang herself with the electrical cord. Berry believes she made a suicide attempt, at least a gesture, but enough of a gesture to jump off that coffee table and hit the back of her head.

Then, as Berry's theory goes, Sandy tried to clean up in the basement shower. But ultimately, she ended up on the first floor, where she collapsed into unconsciousness on the couch while smoking. It was that lit cigarette, Berry believes, that caused the fire.

"There certainly was a big death wish going on," says Berry. "She did want to die."

As for the fire, Paulus argued at trial that Maloney set it to cover up his crime. But Berry's arson experts insist this didn't happen. "There is no question that the investigation conducted by the state is junk science," says Berry's expert, James Munger.

The state speculated that Sandy's vodka may have been used to start the fire, and pointed to the burn pattern in front of the couch as proof. But Munger, who didn't buy that theory, set a couch similar to Maloney's on fire. Almost immediately, the cushions melted, and it's the melting foam, not any accelerant, that causes the telltale burn pattern.

"There's absolutely no question in my mind John Maloney is an innocent man," says Munger.


So why didn't Maloney's own lawyer, prominent Defense Attorney Gerry Boyle, make these arguments? Boyle believes that to have gone before a jury and said this was an accident would have been malpractice.

Boyle dismissed the apparent suicide notes and the basement evidence, and instead came up with a third explanation: Sandy was murdered by Maloney's girlfriend, Tracy Hellenbrand, the same woman who set him up in a Las Vegas hotel room.

But Maloney remembers things quite differently. He says he told Boyle "numerous times" that he believed Sandy's death was an accident. So why didn't he fire Boyle? Because he didn't have the funds to pay for another attorney.

In a report rejecting a complaint the Maloney family filed against Boyle, Wisconsin state officials called Boyle's defense strategy "reasonable."

Biscupic, who was on Paulus' prosecution team, says the suicide theory is a fantasy. The only basement evidence prosecutors seemed to care about was Sandy's bloody shirt, which they say Maloney took downstairs to the laundry, after killing Sandy upstairs.



Berry believes Maloney did not kill his wife. She's convinced Sandy caused her own death."

Berry says there was no blood upstairs because Sandy cut her head in the basement, where her blood was found. State investigators used a chemical spray, Luminol, which illuminates blood traces even after a clean-up. In this case, Luminol detected blood in several parts of the basement, including the bathroom and the shower.

Blood evidence was also found in the laundry room, on towels, on Sandy's shirt and in another bloody footprint. "They combed this place looking for any DNA link, any trace of John Maloney here, and they couldn't find it," says Berry.

According to *48 Hours*, Maloney's son, Sean, read their family's statement: "The Maloney family is not giving up on my dad. We love him and we know the truth. I believe in my dad. And I will fight until he is by my side."

Epilogue from CBS 48 Hours

For both John Maloney and former prosecutor Joe Paulus, much happened within a year and a half of the first broadcast of this story.

State officials filed new misconduct charges against Paulus, for which he was expected to serve two more years in prison. In the interest of justice, the Wisconsin Supreme Court invited John Maloney's lawyers to present new arguments concerning Paulus' conduct and questions raised by the original 48 Hours broadcast: was the fire an accident?

"In this case there is a real issue as to cause of death and whether or not there was an arson," says Maloney's attorney for the Supreme Court appeal, Lew Wasserman. And, did the editing of the police tapes distort the truth?

"The cameras aren't here because John Maloney is in jail. They're here because the special prosecutor is in jail because he corrupted the judicial system at the same time he was prosecuting John Maloney," Wasserman says.

But in the end those arguments weren't persuasive enough. On the eighth anniversary of his wife's death, the court denied Maloney a new trial, ruling that he had failed to present sufficient evidence.

John Maloney vows he will never give up. Maloney can appeal again if his team uncovers new evidence of misconduct regarding Paulus' prosecution of the case. John Maloney will not be eligible for parole until 2024. **For more information regarding Sheila's book, *Full Circle*:** <http://johnrossmaloney.org/>

About Sheila Berry:

My husband, Doug and I are founders of Truth in Justice, an educational nonprofit concerned with wrongful convictions. The organization's website (www.truthinjustice.org) is a resource for all aspects of the subject, and receives approximately 250,000 unique visitors per year. *Full Circle* is our second non-fiction book about a specific case; *Who Killed Sarah?* was published in 2005 by Public Eye Publications. I have written the novels *The Spy Who Never Was* (Hearst Publications, 1982) and *My Name is Legion* (Archer Books, 1999), as well as *Paha Sapa: The Black Hills* with Gladys Bensimon (2005). I also write for law journals (e.g., "Bad Lawyering," *Northern Kentucky Law Journal*, 2003) and scientific journals (e.g., "The Elephant in the Crime Lab," with Larry Ytuarte, Ph.D., *The Forensic Scientist*, 2009).

Writing *Full Circle*

by Sheila Martin Berry



August 13, 1999 was a typical, late summer Friday. A long work week left us too tired to go out, but not yet ready for sleep. My husband, Doug, picked up the television remote control and began channel surfing. As usual, there was nothing on. And then a blur on the screen and a sound byte caught my attention.

"Wait," I insisted. "Go back." And when he landed on the ABC affiliate, "Stop."

"Tonight, we examine the case against John Maloney, a Green Bay, Wisconsin police detective convicted of killing his estranged wife and setting her body on fire," intoned a narrator. "His lawyer says the prosecutor got Maloney's girlfriend, Tracy Hellenbrand, to use sex to trick him into confessing." The face of a pretty young woman filled the screen. "I helped catch a killer," she said, her eyes demurely downcast.

My hometown, Appleton, is only thirty miles from Green Bay. Although I didn't know John Maloney, I knew the prosecutors and the state police agents involved in the case. In fact, I had worked for the lead prosecutor, Joe Paulus, as director of victim assistance in his office. A decade earlier, the victim in a highly publicized rape case disclosed to me that our star witness was the actual perpetrator. When Joe refused to rectify the matter, I reported it to the presiding judge. The rape conviction was vacated, and I left not only my job, but the state.

Of course, we had to watch the program.

John Maloney, we learned, had been a Green Bay police officer for nearly 20 years, and was married to Sandy Maloney for almost as long. But Sandy had become addicted to prescription pills and alcohol. John moved out in 1997 and filed for divorce. Within a few months, although he continued to pay Sandy child support, he had full custody of their three sons, ages 12, 10 and 9. He also had a girlfriend.

Tracy Hellenbrand was an IRS criminal investigator almost 14 years younger than John. They started dating a couple of months after John's divorce was filed, and in a couple more months, they all—John and his three boys—moved in with Tracy. They signed a long term lease just a few days before Sandy died.

The state's case went like this: On the evening of February 10, 1998, John went to Sandy's house to make sure she would show up at the final divorce hearing the next day. She let him come inside, they argued, he hit her over the head with some never-identified object, pushed her down on the living room sofa and manually strangled and/or suffocated her. Then he took off her shirt, ran down to the basement and put it into a laundry hamper. John then proceeded to light, smoke and deposit cigarettes all over the house, to give the impression that Sandy smoked carelessly. After that, he poured the same kind of vodka Sandy drank over some cloth, draped it between the sofa and the floor, lit the far end of the cloth to start the fire, and left. He made it home within thirty minutes, during a time when Tracy didn't have a "visual" on him.

That's a hard sell, especially when there was no physical evidence, no eyewitnesses, nothing connecting John to Sandy's death. But investigators "had a talk" with Tracy and convinced her John had killed Sandy.

Then they recruited her to elicit a confession from John while hidden cameras rolled. Tracy used sex as an essential element of these interrogations—off-camera, of course—and even then, it took four attempts over seven weeks to get what the state called a confession.

When the "confession" videotape was played on 20/20, we were not impressed. John appeared to be saying whatever Tracy wanted to hear in order to make her stop haranguing him. He confessed to using Tracy's car to drive to Sandy's house in the early morning hours of February 11, 1998—over eight hours later than the state said he was there.

We were intrigued. How could jurors convict him on evidence that was, at best, contradictory, and at most, non-existent? What did the defense offer, other than its theory that Tracy did it?

The following Monday, we contacted John's sister, Virginia. We told her we were interested in writing a book about John's case, that we wanted digital copies of all the discovery and anything else they had that might be helpful. In return, we promised to write whatever we concluded. If we concluded John is guilty, that is what we would write. Virginia agreed without hesitation.

We met Virginia—Ginny—and most of John's large, extended family the next month when we were in Green Bay to promote another book. While we chatted, his relatives took turns scanning case documents. They were serious about giving us everything, because they had nothing to hide.

Even with such dedicated manpower, half a year passed before we received the scanned copies of John's case materials. Reviewing the materials—investigative reports, autopsy and crime lab records, witness interviews and court transcripts, even records the state didn't have, such as 20 years of Sandy's medical records—was complicated by the fact that the scans had been saved to Word instead of Rich Text. So many unnecessary codes were incorporated that on several occasions, my computer was blown back to "C:/" What initially seemed an impediment turned out to be a blessing, however, as it forced us to slow down and thoroughly review the records while we deleted those pesky codes.

Our review raised more questions than answers, and we turned to forensic experts for help. Toxicologist Larry Ytuarte, Ph.D., said that the difference between Sandy's blood alcohol level of .25% and her vitreous (eye) alcohol level of .40% meant that a few hours before her heart and respiration stopped, her actual blood alcohol was at least .36%—a lethal level. Profiler Brent Tuvey concluded there was insufficient evidence to believe a crime had been committed.

He recommended a slew of additional investigation for the police, who, of course, were not interested in further investigation. Internationally known fire origin and cause expert Gerald Hurst, Ph.D., said there was no evidence of arson; he concluded that Sandy passed out drunk, that the fire started from careless use of smoking materials—probably a dropped cigarette—and she failed to rouse when the fire began.

A panel of fire experts initiated by Chris Bloom, whose consensus report was written by James Munger, Ph.D., reached the same conclusion as Dr. Hurst. Forensic pathologist Dr. James Dibdin opined that Sandy died from lethal alcohol intoxication, and was either brain dead or deeply comatose when the fire broke out. The differences between her blood alcohol (.25%) and her vitreous alcohol (.40%), he said, meant she continued to have pulse and respiration for about 8 hours after the fire self-extinguished.

During six years since we began book research, John's legal remedies were pursued with direct appeal, which was denied, and then with a state habeas. The new evidence we had developed up to that point in our research was not utilized in these



proceedings. After his state habeas was denied in 2003, it was given a second wind when the original prosecutor, Joe Paulus, was charged by federal authorities with taking bribes to fix cases. The case also caught the attention of CBS News *48 Hours*. We shared all of the information we had developed with the producers.

The *48 Hours* documentary, "A Question of Murder," deeply upset Wisconsin authorities. The Attorney General's personal attorney announced that he had reviewed photos of 57 tissue slides taken at Sandy's autopsy, and based on his experience as a lawyer, he concluded Sandy had been strangled. This had the effect of derailing John Maloney's appeal efforts. The state supreme court upheld his conviction, ruling that he could renew his innocence claim if he could prove that Joe Paulus framed him. We set aside work on *Full Circle* and went on with other projects. John gradually recovered from the body blow dealt him by the state supreme court, and retained new counsel. His

attorney combed the records for any indication that the 57 tissue slides photos had been turned over in discovery, and found none. This was Brady evidence if he'd ever seen it—and he wanted to see it. His motion for post-conviction discovery, heard at the end of 2007, was denied in its entirety. The court's rationale was that John had already had enough kicks at the cat. In 2009, John's eldest son, Matt, made an Open Records request for the photos of the 57 tissue slides.

There was no basis to deny his request, and when he obtained them, they were sent to Dr. Dibdin and to another forensic pathologist. Both agreed that there was nothing in the slides to "prove" strangulation, only the effects of lividity. If you don't have murder, you don't have arson. In this case, experts overwhelmingly agreed that you don't have either.

But John also didn't have a lawyer, and without someone with "Esquire" following his or her name, who understood the forensic evidence and Constitutional issues, his case would go nowhere. I thought that, without a resolution to the case, the book was equally stuck. I was whining about the problem to another true crime writer, John Allen, author of the "Skeptical Juror" series. "But you know more about this case than anyone," he pointed out. "You know what the evidence says really happened. Why not end it with what really happened?"

"Brilliant." I don't know if I told him that, but I certainly thought it, and my opinion hasn't changed. Six months later, *Full Circle* was published in e-book formats (only). Because our research has convinced us that John Maloney is innocent and no crimes occurred, 100% of the proceeds of book sales goes to his defense fund.

How long do you keep trying? For as long as it takes. That's our motto, and that's our advice to John Maloney.