OPEN AND SHUT - EPISODE 5 - THE CIRCUS

Two decades after high-profile murder trial, questions remain in the prosecution of Ken Hudson

*A possible Miranda violation, a missing taped ‘confession,’ and an improperly charged girlfriend among the flaws in Vince Biskupic’s case*

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*This is the fifth installment of Open and Shut, a seven-part podcast and online series investigating the virtually unchecked power of prosecutors. See the entire project at* [*wpr.org*](https://www.wpr.org/openandshut)

In the summer of 2000, 19-year-old Shanna Van Dyn Hoven had just finished her first year at the University of Wisconsin-Madison.

She was back home in Kaukauna, Wisconsin. And one Sunday afternoon, she went for a jog on a route she often followed. Van Dyn Hoven reached the last leg, a stretch of hill between woods and a quarry.

That’s when a neighbor, David Carnot, the son of a recently retired police officer, heard her screaming. He stopped his yard work and ran through the copse of trees between his house and the road. He later told his story to local news reporters.

“You could hear the fear in her voice, that she feared dying,” Carnot said. “You could tell that something was drastically bad. … I started hollering, ‘Somebody dial 9-1-1.’ But nobody was here — nobody heard me.”

Carnot says he found Van Dyn Hoven lying on the ground, bleeding. Above her stood a man who seemed to have gotten out of a pickup truck.

“The minute I said something, he just looks at me, and then (got) into the truck and drive right for me.”

Carnot says he ran towards a fence at the quarry’s entrance. As he started to climb over it, the truck rammed the fence and struck him in the leg. The driver then fled the scene. A fishing boat on a trailer bounced behind the truck.

Soon after, police were flying down the road in another part of Kaukauna in hot pursuit of that Chevy pickup. Police had seen it driving erratically through the city on three tires. When the truck finally went into the ditch, officers approached it, guns drawn.

The driver, shirtless, was wearing jean shorts and sandals. Police said he appeared to have dried blood on his arms, chest, stomach, legs and feet.

On his upper arm, he had a tattoo that read “KEN.” Police identified him as Ken Hudson.

Investigators say they found a bloody knife on the driver’s side floor and Van Dyn Hoven’s blood on the passenger seat. And the case against Ken Hudson seemed open and shut.

But a Wisconsin Watch and WPR investigation found a litany of holes in this apparently rock-solid case that suggest the prosecution by Outagamie County District Attorney Vince Biskupic was anything but open and shut.

Certified letters asking detailed questions about the Hudson case, emails and phone calls to Biskupic and his attorney were not returned.

**Girlfriend targeted**

One curious aspect of the case involves Biskupic’s prosecution of Hudson’s then-girlfriend Danita Scharenbroch, who has since married and uses the last name of Metko.

At the time of the murder, Metko and Hudson had been dating for about a year. They lived together with her two boys at a mobile home park in a village near Kaukauna. The morning of the murder, they’d all been up north together, camping and fishing.

Metko received the news of Hudson’s arrest with disbelief, shock.

“I didn’t think Ken was capable of that. I mean, he was a bumbling, stumbling fool half the time,” Metko says. “I always said he was an accident waiting to happen, but not a murderer.”

But as Kaukauna’s assistant police chief would later tell her — everybody’s capable of murder.

Says Metko: “I’m believing everything they’re telling me. He did it, they found the knife … I mean, I have no reason ever not to believe the police!”

But as the investigation continued, Metko had a number of unsettling experiences. She says the police told her that she might be a suspect — even though at the time of the murder, she was at home waiting for a pizza delivery.

And early on, officers asked Metko to drive back north to figure out where Hudson had bought the knife — which seemed odd because police had already found the receipt for the knife from a nearby Kmart in Hudson’s pocket.

Metko eventually felt so rattled that she hired a lawyer for herself. And her faith in the police faded.

“I started to believe maybe Ken really wasn’t guilty of this,” she recalls. “Maybe it wasn’t like they were saying.”

**Metko receives a divine message**

Metko prayed for guidance. The answer, she says, came to her while she was doing the laundry.

“And all of a sudden it was like, I could hear this voice. I know. It sounds funny. You got to have faith to believe it. It was just like, it was like ‘Stick by him and help him.’ ”

Metko walked to the mailbox and found a letter from Hudson. It said: “Nobody’s ever stuck by me and helped me” — the same message she believed she got from God.

And so she did. Metko started visiting Hudson in the Outagamie County Jail.

After several months, Kaukauna Assistant Police Chief John Manion and another officer visited Metko at the Subway sandwich shop she managed. They told her not to visit Hudson anymore. There was a no-contact order involving any potential witnesses, they said.

Metko called her attorney.

“He goes, ‘Danita, just stay away from anything to do with Biskupic. He will pull you into this. You have nothing to do with it. He doesn’t care about you or your kids,’ ” Metko recalls. “So I listened to him.”

So for a while, she stopped visiting Hudson. But eventually, she consulted Hudson’s attorney, who told her it was okay to visit Hudson, and she resumed her trips.

And then, in February 2001, police paid her another visit.

This time, they asked Metko to come in for a talk. She says she was “stupid” for not calling her lawyer.

When Metko and the officers arrived at the Outagamie County Justice Center, officers arrested Metko. Her supposed crime: talking to Hudson on the phone and allegedly violating that no-contact order the police had warned her about. As a condition of release, Metko had to agree not to talk to Hudson or “I’d be thrown into jail until my court date in May.”

And so, about two weeks before Hudson’s trial, Metko suddenly stopped accepting his calls. And that, Hudson says, had a real impact on his case.

**Hudson’s version of events**

For 21 years, Hudson has worked tirelessly in his prison cell, poring over police reports and photographs, scrutinizing their contents for any contradictions.

In Hudson’s telling, he was in the wrong place at the wrong time.

“I see the victim standing on the side of the road waving her arms and screaming,” Hudson recounts. “So I seen that she was covered in blood. And so I get out of my truck and I run around to where she was standing. And I'm like, ‘What happened? What’s going on? What’s going on?’ And she couldn’t say nothing at that point. … So I’d open up the passenger side door and I told her to sit on the seat, which she did. Right at that time, I hear screaming in the woods, a male screaming.”

That was Carnot, the neighbor who told of running to Van Dyn Hoven’s aid. Hudson says at that point, Van Dyn Hoven fled the truck and crumpled to the ground.

Hudson says he thought Carnot was the killer — and he was scared. So he jumped into his truck and hit the accelerator. He smashed into the fence, then reversed, and took off.

A couple blocks away, Hudson noticed the fishing boat he was towing falling off the trailer. So he stopped, released it and left it lying on the side of the road. Soon, a patrol officer spotted the odd vehicle with a missing tire and empty boat trailer.

“And then he started chasing me and I panicked because I had marijuana on me and I was drinking and my driver’s license was revoked,” Hudson says.

Hudson had also taken some Valium. As for what police found when they pulled Hudson over — the knife in the truck and the blood on his body — they became the focus of multiple motions and appeals.

**String of lawyers — and then none**

A [U.S. Supreme Court decision](https://www.oyez.org/cases/1962/155) guarantees everyone facing felony criminal charges an attorney, even if they can’t pay. Hudson had a number of court-appointed lawyers. His first set withdrew because of a conflict.

Before doing so, however, they entered an insanity plea on Hudson’s behalf — which claimed he did not have the capacity to understand his actions.

But other attorneys left or were fired by Hudson. They wanted him to strike a plea deal; he wanted to prove his innocence.

As the trial approached, Outagamie County Circuit Judge Harold Froehlich agreed to appoint one last lawyer, telling Hudson, “You better learn to cooperate with your new attorney because there won’t be another one.”

But Hudson sought to fire him too. Froehlich gave Hudson 11 days to hire his own lawyer. And that’s why Danita Metko’s arrest became so important.

The weekend after Froehlich issued this deadline, Hudson called Metko numerous times as they worked to line up money from his uncle in New York for a private attorney.

That Monday morning — with seven days left until Hudson needed to hire a new lawyer — Metko headed to her shift at Subway.

“And my sister, she called me at work in the morning and said ‘Look it, Ken called me. He couldn’t call you; the number was blocked from the jail. He couldn’t call our Mom; the number was blocked. He couldn’t call anyone in New York; the number was blocked.’ ”

That’s the same day that officers arrested Metko — and she says a judge banned her from contacting Hudson. She could no longer help him get a lawyer.

So, just two weeks before trial was set to begin, Hudson returned to court without a new attorney. Froehlich said Hudson needed to represent himself. Representing oneself in court is a constitutional right. But it’s one that a legal scholar once called “the right to shoot oneself in the foot.”

**Hudson’s trial a ‘circus’**

Hudson’s trial took place in March 2001, about eight months after Van Dyn Hoven’s murder. Hudson wasn’t totally alone at the defense table. Froehlich had ordered Ed Carns — the last attorney Hudson had fired — to remain as standby counsel, basically coaching Hudson through court procedure.

Biskupic [opened the state’s case](https://www.documentcloud.org/documents/21583023-ken-hudson_trial_day-1_transcript), telling jurors, “The defendant’s actions relate to his anger, to rage and ultimately evil.”

Biskupic argued Hudson was mad at Metko and his mother — whom he’d fought with the weekend that Van Dyn Hoven died.

“You’ll learn from the evidence and testimony that peace met anger,” the district attorney said, “that innocence met evil, that flesh was met with a blade, and ultimately life met death.”

At the start of the trial, Hudson asked the judge to suppress a key piece of testimony. On the night of the murder, the police took Hudson to the hospital to be checked for injuries. While he was there, he was swabbed for evidence and read his Miranda rights. Hudson says he asked for a lawyer.

But police never called one. And hours later, police say, Hudson confessed on videotape to killing Shanna Van Dyn Hoven.

When Hudson’s trial began, he sought to keep that confession from being entered into evidence. Biskupic told the judge that Hudson had not made an “unambiguous request” for a lawyer and therefore had not invoked his right to counsel.

Courts have ruled that [police only have to give you a lawyer](https://www.nola.com/news/crime_police/article_518fbff1-acbf-594e-a99e-1f77c9ae2952.html) if you clearly, specifically ask for one. The judge believed Biskupic and ruled that testimony about the confession was in.

However, police had recorded audio of Hudson at the hospital. It captured Hudson being read his Miranda rights: The right to remain silent, the right to consult with an attorney. As prosecutor, Biskupic would have had access to that tape.

The state says it gave the tape to Hudson’s investigator. But for reasons that are still not clear — partly because the investigator has since died — Hudson never received the tape.

And, speaking of tapes, there was another problem with that alleged confession from the night of the murder. The videotape of that confession does not exist.

At trial, the police testified the videotape had accidentally erased itself. Hudson brought this up, but it just became part of the bizarre spectacle of a man representing himself at his own murder trial — what retired Green Bay TV reporter Jerry Burke described as “a circus.”

Biskupic: “You told Officer Shephardson and Manion you forced the girl in the truck.”

Hudson: “I never told them that. Where’s the audio and video? That they did the recording, but it’s, it’s erased. Where is that video, Vince Biskupic?”

For those keeping score, that’s two tapes — the video tape of Hudson’s alleged confession that had somehow erased itself, and the audio tape that Hudson says he never received — the one where he said he clearly asked for a lawyer.

**Hudson’s claim: I was framed**

On the third day of trial, Hudson submitted a motion to withdraw his insanity plea, insisting he hadn’t committed the crime at all.

And Hudson didn’t just argue that he was innocent. He claimed he was framed.

Hudson testified that police tore open the package of a hunting knife he’d bought earlier that afternoon, smeared it with blood and planted it on the driver’s side floor of his truck. He showed the jury photos of the inside of his truck, saying the knife appeared to move between frames.

As for the blood on Hudson’s legs? He said Kaukauna police officer Robert Patschke poured it on him.

“When I was in the back of the squad car, the officer threw that blood on me,” Hudson testified. “I said, ‘What are you doing? Stop doing that. What are youse doing to me?’ ”

Biskupic outlined Hudson’s incredible claims in a question: “And you’re saying the police walked up to your car with a bucket of blood, a bloody knife and some other — probably her hand with her fingerprint and put it on your car, is that what you’re saying?”

In an interview, Hudson insists he is innocent.

“I just get really passionate because listen, this is the God’s honest truth, that they did plant that knife in my truck and Patschke poured that blood on me,” Hudson says. “I’ll take a lie detector right now and pass that with flying colors. I’m telling the truth!”

Hudson didn’t call any witnesses other than himself. Toward the end of trial, he threatened Carns and asked to be taken out of the courtroom. That’s when Carns delivered his [closing argument](https://www.documentcloud.org/documents/21583025-ken-hudson_trial_day-5_transcript) — which completely undercut Hudson’s case.

Carns argued essentially that the state hadn’t proved that Hudson intended to kill Van Dyn Hoven. He said nothing about Hudson’s claim that he was framed.

“The evidence was so overwhelming,” recalls Burke, the former WBAY TV reporter who covered the trial. “When the evidence is the way it is, you go, ‘This is a slam dunk.’ And it pretty much was. I don’t even remember how long the jury was out. It wasn’t that long.”

Wisconsin does not have the death penalty. Hudson was given the maximum sentence — life in prison with no chance for parole.

**Case against Metko tossed — twice**

Burke wonders how things would have been different — perhaps less chaotic — if Hudson had “let the attorney do his or her job.” What Burke didn’t realize is Hudson was trying to hire a private attorney. Danita Metko was helping him. But when Metko was arrested and charged, those efforts ended.

And it turns out, Metko’s arrest should never have happened. Biskupic assigned his deputy to handle the charges against Metko.

“Fast forward to my court date in May, after — long after Ken got already convicted, and they threw it out,” Metko says. “The judge said, ‘She didn’t commit a crime. There was no crime committed.’ ”

The [circuit court](https://www.documentcloud.org/documents/21583030-danita-metko_circuit-court_transcript) and the state [Court of Appeals](https://www.documentcloud.org/documents/21583029-danita-metko_appeals-decision) both found that Metko didn’t break any law. There wasn’t even a law for her to break. That no-contact order was enforceable only against Hudson — not her.

So why was she arrested? Metko has a theory: “I was really the only person to help Ken. I was really his only liaison to maybe, possibly, getting him some money to help with an attorney.”

**Evidence raises more questions**

Even today, Metko is convinced of Hudson’s innocence. She still visits him in prison, and she’s put up a lot of her own money to help him with his appeals and DNA testing.

Among the many anomalies in the case is that Shanna Van Dyn Hoven’s blood wasn’t where one might expect it to be.

Investigators found Van Dyn Hoven’s DNA on Hudson’s right hand, but Hudson didn’t leave any traces of blood on the surfaces he probably touched over the course of the 16-mile car chase. Investigators did not find it on the steering wheel, the gear shifter, the driver’s side floor where the knife was found — and not on the boat or the trailer.

And some of the places that looked like blood on Hudson’s body were tested — [and they had no DNA in them at all](https://wisconsinwatch.org/2017/09/dna-tests-in-wisconsin-murder-raise-questions-amid-alleged-evidence-tampering/). DNA experts interviewed by Wisconsin Watch and WPR could not fully explain what caused the confusing DNA results.

But one thing is clear: There were definitely problems in Biskupic’s prosecution.

Remember the two tape recordings — one that supposedly erased itself and one that didn’t make it Hudson? Several years after the trial, Hudson uncovered important new information about that evidence.

A forensic tape examiner looked into the Kaukauna Police Department’s video equipment. He [concluded](https://www.documentcloud.org/documents/21583028-confession_tape-expert_opinion) it was physically impossible for the videotaped confession to just accidentally “erase itself.”

And in 2007, Hudson finally received a copy of that other tape — the audio tape from the hospital that Hudson claimed had recorded him asking for a lawyer.

Says Hudson: “And those tapes prove beyond any doubt whatsoever that I was telling the God's honest truth that I wanted to talk to a lawyer … And that is something serious — for a defendant to be able to prove that these police were lying.”

The audio tape and [transcript](https://www.documentcloud.org/documents/21583032-hospital-tape_transcript) back up Hudson’s claims. In the tape, he said, “I want to talk to a lawyer.” An unambiguous request.

In 2011, the [Wisconsin Court of Appeals found](https://www.documentcloud.org/documents/21583027-ken-hudson_appeal-decision) the tape proved Hudson had clearly asked for an attorney. Hudson argued that by continuing to question him, the police had committed a so-called Miranda violation.

Normally, the remedy for a Miranda violation is to exclude any incriminating statements made after the defendant asked for a lawyer. In this case, it would mean that Hudson’s alleged confession would be thrown out. He might even get a new trial.

**‘Harmless error’**

But, the judges decided they didn’t need to rectify the Miranda violation because of a legal principle called “harmless error.”

Bennett Gershman, a law professor at Pace University, explains how harmless error works: “If the prosecutor did something wrong and then engaged in an error, what an appellate court will typically do, because they don’t want to have to try cases over or over again, (is determine) how much did this violation matter?”

Harmless error acknowledges that an attorney made a mistake or broke a rule. But it doesn’t fix the error, or sanction the person who made it.

Courts find harmless error when they determine “that the other evidence was strong enough so that this evidence didn't really matter. … (and) the jury would have convicted anyway,” Gershman says.

Harmless error is a pretty common finding. The [Innocence Network studied](https://www.documentcloud.org/documents/21583026-innocence-project_prosecutorial-misconduct-report) 660 confirmed cases of prosecutorial misconduct that occurred from 2004 to 2008. And in about 80% of the cases, the misconduct was considered “harmless.”

And of cases in that study where the courts determined the misconduct affected the verdict? Only one prosecutor was disciplined.

“And a rational prosecutor would probably say ‘I’ve got the evidence. It’s very, very strong. I’m going to convict,’ ” Gershman says. “And … ‘ If I make errors, they’re not going to be seen as that consequential.’ So the rational prosecutor might have an incentive to engage in rule violations.”

But what if some day the courts decide that all of this — the Miranda violation, the lack of blood on the steering wheel, the questionable DNA evidence, even the arrest of Danita Metko — that all of this amounts to error that is considered “harmful?”

Kate O’Brien, a minor witness in the Hudson trial, has some thoughts on that. She told the jury she saw Hudson driving erratically on the day of the murder. O’Brien remembers sitting on the witness stand as she testified against Hudson feeling chills, like she was in the presence of evil.

And nearly 20 years later, O’Brien’s confidence in Hudson’s guilt hasn’t wavered.

“There is no question in my mind that, yeah, the police may have screwed up, but this guy did it,” O’Brien says. “Because those two possibilities can happen at the same time. They can mess it up with him still being really guilty.”

She is “scared to death” that Hudson could be released because of errors by Biskupic.

“This guy was trusted by us,” she says of Biskupic. “I probably voted for the guy, and he just put so many people in jeopardy. And I'm furious.”

O’Brien adds: “All the people who … were witnesses in his cases are now potentially in danger, and that’s unforgivable. Especially because this was just so open and shut. It should have been open and shut. “

On the next episode of Open and Shut: A case of confirmed innocence. And exoneration.

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