

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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**Appeal No. 2025AP1256-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2024CF1266

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ROOSEVELT L. SPENCER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Eau Claire County:
DOUGLAS JAMES HOFFER, Judge. *Affirmed and cause remanded for further proceedings.*

Before Stark, P.J., Hruz, and Gill, JJ.

¶1 GILL, J. The State of Wisconsin appeals from an order granting Roosevelt Spencer's motion to suppress evidence based on the doctrine of issue preclusion. In a prior case involving the same charges at issue as those in this

case, Spencer filed a motion to suppress, which sufficiently raised a Fourth Amendment challenge insofar as the burden shifted to the State to prove that the evidence was lawfully obtained. At a scheduled suppression hearing, the State failed to produce any evidence because its only witness did not appear. The circuit court granted Spencer's motion. After the State successfully moved to dismiss that case without prejudice, and after it refiled the exact same charges, Spencer moved to suppress the evidence suppressed in the first case on the grounds that issue preclusion prevented relitigating the issue. The circuit court in this case agreed with Spencer and granted his motion.

¶2 We first conclude, as a matter of law, that the suppression issue was “actually litigated” in the previous criminal action because, contrary to the State's arguments on appeal, the circuit court granted Spencer's motion based on the State's failure to meet its evidentiary burden. See *Estate of Rille v. Physicians Ins.*, 2007 WI 36, ¶37, 300 Wis. 2d 1, 728 N.W.2d 693. We further conclude that the circuit court in the present action did not erroneously exercise its discretion by determining that applying issue preclusion to the facts of this case comported with the principles of fundamental fairness. See *id.*, ¶38. Therefore, we affirm and remand for further proceedings consistent with this opinion.

BACKGROUND

¶3 Law enforcement officers conducted a traffic stop of Spencer and searched his vehicle pursuant to 2013 Wis. Act 79. As a result of that search, the State charged Spencer in January 2024 in Eau Claire County Circuit Court Case No. 2024CF23 with one count of possession of methamphetamine with intent to deliver (more than three but not more than ten grams) and one count of possession of THC, with each count as a repeater.

¶4 Spencer moved to suppress the evidence obtained from the traffic stop, arguing that the officers lacked reasonable suspicion or probable cause both to extend their seizure of Spencer and to search his vehicle. At the scheduled suppression hearing, the State’s sole witness, Officer Matthew Pahl, failed to appear. Defense counsel argued that the State’s failure to produce Pahl was not “justified or excusable,” and he moved the circuit court¹ to grant Spencer’s motion to suppress, without receiving any evidence, on the basis that the State could not meet its burden to demonstrate that the traffic stop and search were lawful.

¶5 Conversely, the State argued that granting Spencer’s motion without evidence would be an “extreme remedy,” and it requested that the circuit court set another evidentiary suppression hearing so that Officer Pahl could testify. After reviewing Spencer’s motion to dismiss, the court stated that it could not grant the motion “in the event that a prosecutor advises that there was negligence.” In response, the prosecuting attorney stated, with respect to the subpoena for Pahl, that he was “not certain what happened,” but he could tell the court that the “subpoena only went out yesterday.”² The court then stated that the State did not need to inform the court “what happened” with respect to the subpoena, but it asked the State whether “the District Attorney’s Office [was] negligent.” The prosecuting attorney responded, “I guess, I’m not sure what the case law is on it. I can tell you we didn’t subpoena Officer Pahl until yesterday. So I don’t know if

¹ The Honorable Jon M. Theisen presided over Eau Claire County Circuit Court Case No. 2024CF23.

² The parties both assert that the subpoena was sent two days before the suppression hearing, but the hearing transcript clearly demonstrates that the State sent the subpoena the day before the hearing.

that meets the burden of negligence” The court stated, “I would say it does. But I’m going to grant the motion to suppress.”

¶6 The State filed a motion for reconsideration.³ The circuit court denied the State’s motion, stating, “I don’t think you have to seek forgiveness or anything, but you just say that you were negligent and you need more time and we reschedule. They have not done that. So the motion to suppress is sustained.” The State then moved to dismiss the case, which the court granted, dismissing the case without prejudice. The State did not appeal from the court’s decision granting Spencer’s motion to suppress or the court’s decision denying the State’s motion for reconsideration.

¶7 Shortly after the circuit court granted the State’s motion to dismiss, the State filed the present case against Spencer. The State charged Spencer with the same crimes as in the first case, and the criminal complaint included a probable cause section identical to that in the complaint in the first case. Spencer filed a motion to suppress based on the doctrine of issue preclusion, arguing that the evidence derived from the traffic stop “was already ordered suppressed in a prior proceeding and the [circuit] court’s order must be given issue preclusive effect.” According to Spencer, issue preclusion applied because the suppression issue was “actually litigated” in the prior case and it would be “fundamentally fair” to apply the doctrine under the facts presented. *See Estate of Rille*, 300 Wis. 2d 1, ¶36.

³ The State’s motion for reconsideration is not part of the appellate record.

¶8 At a hearing on Spencer’s motion, the State conceded that it had acted negligently by failing to timely subpoena Officer Pahl to testify at the suppression hearing but that it still did not “know exactly why the witness wasn’t subpoenaed until the day before” and could not “say for certain what went wrong.” Regardless, the State argued that the suppression issue was not actually litigated because the circuit court in the prior case did not grant Spencer’s motion on the merits. The State agreed that if Pahl had testified, and if the court had granted the suppression motion after hearing evidence, then the State could not “re-raise that issue because it’s already been decided.” According to the State, however, “there’s a massive difference between ... a case in which a witness didn’t show up” and a case in which the State is attempting to obtain a more favorable ruling after a previous court heard evidence and made a decision granting a suppression motion. The State also argued that fundamental fairness favored not applying issue preclusion to the suppression issue.

¶9 In an oral ruling, the circuit court⁴ granted Spencer’s motion to suppress based on issue preclusion. The court held that the suppression issue had been actually litigated in the prior case. Citing *City of Sheboygan v. Nytsch*, 2006 WI App 191, ¶12, 296 Wis. 2d 73, 722 N.W.2d 626, *vacated in part on other grounds*, 2008 WI 64, 310 Wis. 2d 337, 750 N.W.2d 475, the court stated that the suppression issue did not fit into any of the situations outlined in that case where an issue is not actually litigated. More specifically, this was not a situation in which: a party might have interposed the suppression issue as an affirmative defense in the prior case but failed to do so; the suppression issue was raised by a

⁴ The Honorable Douglas James Hoffer presided over the underlying criminal case.

material allegation of a party's pleading but was admitted explicitly or by virtue of a failure to deny in a responsive pleading; a party raised the suppression issue and the other party admitted the issue before trial; or the parties stipulated to the merits of suppression issue.

¶10 Rather, the circuit court concluded that the issue was “properly raised, it was submitted for determination, and it was determined.” The court stated that Spencer raised the issue, the State had notice that the issue was raised, the State had an opportunity to present evidence, the State failed to present evidence, and, consequently, the prior court granted the motion to suppress. Accordingly, the court concluded that the suppression issue was actually litigated and determined in the prior proceeding by a valid judgment and that the determination was essential to the judgment.

¶11 As to fundamental fairness, the circuit court noted that the State could have obtained review of the prior court's decision to grant Spencer's motion to suppress and, in fact, the State did file a motion for reconsideration. Further, the court found that the State could have requested, but failed to request, in its motion for reconsideration that the court “reopen its judgment ... citing either excusable neglect or a variety of other arguments which were available.” The court also stated that both cases involved “precisely the same” suppression issue and the same burdens of proof, further favoring a determination that issue preclusion applied.

¶12 Next, the circuit court considered whether “significant differences in the quality of extensiveness of proceedings between the two Courts warrant relitigation of the issue.” The court stated that

to the extent there was a lack of quality or a lack of evidence provided ... at the first hearing, it's a lack of evidence that was provided because the State did not provide any witnesses and chose not to avail itself of the remedies that were available once that witness did not appear.

¶13 Finally, the circuit court found that matters of public policy favored the application of issue preclusion on the suppression issue. In analyzing the public policy involved, the court again referenced the fact that the State could have sought, but failed to seek, appropriate relief from the prior court's order granting Spencer's motion to suppress. The court also expressed concern that if issue preclusion did not apply, "every time" the State lost a suppression motion, it could simply dismiss the case without prejudice and relitigate the issue, "maybe this time in front of a judge who's more amenable."

¶14 The circuit court entered a written order encompassing its oral ruling, and it later denied the State's motion for reconsideration following a hearing. The State now appeals.

DISCUSSION

¶15 The doctrine of issue preclusion, formerly known as collateral estoppel, is "designed to limit the relitigation of issues that have been contested in a previous action between the same or different parties." **Randall v. Felt**, 2002 WI App 157, ¶9, 256 Wis.2d 563, 647 N.W.2d 373 (citation omitted). To determine whether the doctrine of issue preclusion bars relitigation of the suppression issue, we apply a two-step analysis: (1) whether issue preclusion can, as a matter of law, be applied, and if so, (2) whether the application of issue preclusion would be fundamentally fair. See **Estate of Rille**, 300 Wis. 2d 1, ¶36. Issue preclusion can be applied only if the first step is satisfied. **Id.**, ¶37.

I. Actually litigated

¶16 “In the first step, a circuit court must determine whether the issue or fact was actually litigated and determined in the prior proceeding by a valid judgment in a previous action and whether the determination was essential to the judgment.”⁵ *Id.* “This stands in contrast to claim preclusion, which extends to all claims that either were or *could have been* asserted in the previous litigation.” *Dostal v. Strand*, 2023 WI 6, ¶24, 405 Wis. 2d 572, 984 N.W.2d 382 (formatting altered).

¶17 “An issue is ‘actually litigated’ when it is ‘properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.’” *Randall*, 256 Wis. 2d 563, ¶9 (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. d (AM. L. INST. 1980)). “An issue on which relitigation may be foreclosed may be one of evidentiary fact, of ‘ultimate fact,’ or of law.” *State v. Miller*, 2004 WI App 117, ¶19, 274 Wis. 2d 471, 683 N.W.2d 485 (citation omitted). “The determination under the first step is a question of law, which this court decides on appeal independently of the circuit court but benefiting from its analysis.” *Estate of Rille*, 300 Wis. 2d 1, ¶37. “The burden is on the party asserting issue preclusion to establish that it should be applied.” *Miller*, 274 Wis. 2d 471, ¶19.

⁵ While the State correctly outlines the proper standard under the first step of issue preclusion, the State does not appear to argue, much less develop an argument, that the circuit court’s order granting Spencer’s suppression motion in the prior case—if actually litigated—was not a “valid judgment” or was not “essential to the judgment.” See *Estate of Rille v. Physicians Ins.*, 2007 WI 36, ¶37, 300 Wis. 2d 1, 728 N.W.2d 693. To the extent the State intended to raise these arguments, we deem them undeveloped and conceded. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). We therefore do not address these requirements further, and we limit our analysis under the first step to whether the suppression issue was actually litigated.

¶18 The State argues that the suppression issue was not actually litigated—and no decision was made concerning an issue of evidentiary fact, ultimate fact, or law—at the first suppression hearing because the parties did not present any evidence or argument as to whether the evidence derived from the traffic stop should be suppressed; the circuit court did not “set forth and apply the applicable legal standards”; the court “never addressed the merits of Spencer’s suppression motion or the State’s objections”; and the court “made no independent factual findings or legal conclusion.”

¶19 Conversely, Spencer argues that the suppression issue was actually litigated because “the State had the opportunity to present evidence on the motion but declined to take the necessary steps to do so.”⁶ (Formatting altered.) Spencer further contends that the circuit court’s decision not to adjourn the suppression hearing in the first case “was within its sound discretion.” According to Spencer, “[a]bsent an argument based upon excusable neglect, the court in the former case could reasonably decide to determine the motion to suppress based upon the pleadings presented (as it did).”

⁶ We pause to note Spencer’s apparent misunderstanding of our supreme court’s decision in *Michelle T. v. Crozier*, 173 Wis. 2d 681, 495 N.W.2d 327 (1993). In particular, Spencer cites *Michelle T.* for the proposition that for an issue to be “actually litigated,” both parties must have an “[a]dequate opportunity or incentive to obtain a full and fair adjudication in the initial action.” We agree with the State that *Michelle T.* does not support Spencer’s assertion. In the portion of the *Michelle T.* opinion referenced by Spencer, our supreme court listed the five factors that a circuit court generally examines when deciding whether issue preclusion satisfies the notions of fundamental fairness. *Id.* at 688-89. The court stated that the fifth factor pertains to whether matters of public policy and the individual circumstances involved render the application of issue preclusion to be fundamentally unfair, including whether a party had an “inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action.” *Id.* at 689. However, a court considers fundamental fairness only if it concludes that an issue was actually litigated. See *Estate of Rille*, 300 Wis. 2d 1, ¶37.

¶20 We conclude that the suppression issue was actually litigated. Spencer’s motion to suppress sufficiently raised a constitutional challenge to the evidence derived from the seizure of his person and the search of his vehicle, such that the State then had the burden to prove that the seizure and search were lawful. *See State v. Radder*, 2018 WI App 36, ¶¶10-15, 382 Wis. 2d 749, 915 N.W.2d 180 (explaining the pleading requirements for a defendant to obtain an evidentiary hearing on a motion to suppress and stating that once those requirements have been met, the State bears the burden at the hearing). Accordingly, the issue was properly raised and was submitted for determination.

¶21 When the State failed to present any evidence to meet its burden at the scheduled suppression hearing, Spencer’s defense counsel moved the circuit court to grant the motion on the merits. In response, the court stated that it was “going to look at the motion first,” and it asked the State to explain why it had failed to introduce evidence. Once the State failed to produce evidence to satisfy its burden of proof—and failed to offer an excusable reason for not producing any evidence—the court granted Spencer’s motion based on the State’s failure to meet its evidentiary burden. The court’s decision was a determination based on law—i.e., one based on the State’s failure to show good cause for not presenting any evidence and its resulting failure to meet its evidentiary burden on the suppression issue.

¶22 Contrary to the State’s assertion, “actually litigated” does not necessarily require that a circuit court address the merits of the underlying issue only after having heard all possible evidence. While such circumstances could constitute an actually litigated issue, an issue may also be actually litigated when the party with the burden of proof has the opportunity to present evidence, fails to do so, and the circuit court grants the motion based on the party’s failure to meet

its evidentiary burden. In this latter situation, which occurred in this case, the issue is actually litigated because it was properly raised, submitted for a determination, and determined based on an issue of law (i.e., a party's failure to meet its burden of proof).

¶23 The State argues that the circuit court's original decision granting Spencer's motion to suppress is akin to the circuit court's ruling discussed in *Randall*. In *Randall*, this court addressed whether issue preclusion prevented a decedent's daughter from asserting in a probate proceeding that two accounts she held jointly with the decedent passed to her by right of survivorship. *Randall*, 256 Wis. 2d 563, ¶1. At the time of her death, the decedent was under a guardianship, with the daughter having been appointed as guardian of the decedent's person. *Id.*, ¶¶2-3. The daughter was added as a third joint tenant to one of the disputed accounts, and she was also named on the other disputed account. *Id.*, ¶¶3-4. The decedent's son petitioned, prior to his mother's death, for the appointment of a trust company to act as guardian of his mother's estate. *Id.*, ¶5. The daughter opposed the petition, and the guardianship court ruled "that there is a need for a guardian of the estate, given the circumstances and certainly the questionable validity of the joint tenancies," and it appointed the daughter to serve as guardian of her mother's estate. *Id.*

¶24 Following the mother's passing, and in her capacity as guardian, the daughter filed a final guardianship account showing a final asset balance that included the two disputed accounts. *Id.*, ¶6. The daughter, in her individual capacity, filed a receipt in the guardianship as surviving joint tenant on the accounts, and the inventory she filed in the estate did not include the two disputed accounts. *Id.* The decedent's son objected to the inventory, claiming that the disputed accounts should be included as property subject to administration in the

estate. *Id.* He asserted that the court had previously ruled in the guardianship proceedings that his mother “was not competent to agree to the purported joint tenancy at the time it was created.” *Id.*

¶25 The probate court conducted a hearing on the son’s objection to the inventory but took no testimony. *Id.*, ¶7. The court concluded that the “guardianship precludes any additional argument in this court ... about the competency of a ward to give joint tenancy” in the two disputed accounts because “[t]hat issue has been resolved.” *Id.* The court then ordered that “all of the moneys which were supposedly put into a joint account should be returned and inventoried in this estate.” *Id.*

¶26 On appeal, we began our analysis by stating that no testimony was taken or evidence introduced during either the guardianship or estate proceedings. *Id.*, ¶10. In addition, we stated that the “only issue before the guardianship court” at the hearing in question “was whether a guardian of the estate should be appointed.” *Id.* While counsel and the court discussed the two disputed accounts at that hearing, we concluded that the court did not determine “the status and validity of the accounts,” as the court “simply relied on their existence as a factor in deciding that a guardian of the state should be appointed.” *Id.* We further concluded that the guardianship court’s “comments suggest that it believed the status of the disputed accounts could be litigated at a later date if necessary, and that the appointment of [the daughter] as guardian of the estate would facilitate the future resolution of the issue.” *Id.* Accordingly, we held that whether the two accounts were validly created, and whether they passed to the daughter on her mother’s death, “were ... first placed at issue when [the son] objected to the inventory [the daughter] filed in the estate proceedings.” *Id.*, ¶12.

¶27 The State claims that, like in ***Randall***, because the State presented no evidence at the suppression hearing, the circuit court did not make a determination concerning an issue of evidentiary fact, ultimate fact, or law. We disagree with the State’s interpretation of ***Randall***. While in ***Randall*** we did address the fact that no testimony or evidence was introduced at the guardianship hearing, our point in doing so was to highlight that the validity of the joint accounts was not an issue before the guardianship court. Conversely, in this case, the fact that the State presented no evidence in the prior case is significant because—as Spencer’s counsel argued in that case—the lack of evidence meant that the State did not meet its burden of proof on the suppression issue, largely because it failed to produce any evidence in support of its position. Unlike in ***Randall***, where the validity of the joint accounts was not before the court, the suppression issue was the only issue before the circuit court in the prior case when it granted Spencer’s motion to suppress.

¶28 To be clear, the circuit court in the prior case did not grant Spencer’s suppression motion as a default judgment sanction against the State. See RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. e (“In the case of a judgment entered by ... default, none of the issues is actually litigated.”); see also ***Estate of Rille***, 300 Wis.2d 1, ¶48 n.24 (“Wisconsin courts have consistently relied on the Restatement (Second) [of] Judgments for guidance when deciding questions related to issue preclusion.”). The State appeared at the scheduled suppression hearing and was provided an opportunity to present evidence on the suppression issue. While the court referenced the State’s failure to show good cause for not presenting any evidence, the court granted Spencer’s motion after defense counsel moved for such relief given the State’s failure to meet its burden on the suppression issue.

¶29 Furthermore, the suppression issue was not an issue which might have been, but was not, litigated and determined in the prior action. See *Nytsch*, 296 Wis. 2d 73, ¶12.

An issue is not actually litigated if the defendant might have interposed it as an affirmative defense but failed to do so; nor is it actually litigated if it is raised by a material allegation of a party's pleading but is admitted (explicitly or by virtue of a failure to deny) in a responsive pleading; nor is it actually litigated if it is raised in an allegation by one party and is admitted by the other before evidence on the issue is adduced at trial; nor is it actually litigated if it is the subject of a stipulation between the parties.

Id. (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. e). As the circuit court stated, none of these situations apply to the suppression issue, and the State does not argue otherwise. Because we conclude that the suppression issue was actually litigated, we turn to the circuit court's discretionary analysis concerning fundamental fairness.

II. Fundamental fairness

¶30 As stated above, the second step of the issue preclusion analysis requires a circuit court to determine whether applying issue preclusion comports with principles of fundamental fairness. See *Estate of Rille*, 300 Wis. 2d 1, ¶38. “A circuit court's ultimate decision on fundamental fairness is an exercise of discretion and is reviewed as such.” *Id.* “[W]e review the circuit court's final decision on whether to apply the doctrine of issue preclusion under the exercise of discretion standard, deciding the questions of law embedded in the exercise of discretion independently, benefiting from the analysis of the circuit court.” *Id.*, ¶39.

¶31 The five factors that a circuit court generally examines in determining whether the application of issue preclusion satisfies notions of fundamental fairness are as follows: (1) could the party against whom issue preclusion is sought have obtained review of the judgment as a matter of law; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue; (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; and (5) are matters of public policy and individual circumstances involved that would render the application of issue preclusion to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?⁷ *Id.*, ¶61.

¶32 The State concedes that the circuit court did not err in its analysis of the first, second, and fourth factors. Concerning the first factor, the State concedes that it moved the first circuit court for reconsideration of its decision granting Spencer’s motion to suppress and that it therefore obtained review as a matter of law. Indeed, as the court noted, the State could have requested, but failed to request, in its motion for reconsideration that the court “reopen its judgment ... citing either excusable neglect or a variety of other arguments which were available.” Additionally, the State could have, but failed to, seek appellate review of the first circuit court’s decision granting Spencer’s suppression motion.

⁷ The first, second, and fourth of these factors present questions of law, while the third and fifth factors “generally fall within the circuit court’s exercise of discretion.” *Estate of Rille*, 300 Wis. 2d 1, ¶¶38, 62.

¶33 Regarding the second factor, the State concedes that the suppression motions in both cases presented issues of law and the same claims, and it does not argue that there have been intervening contextual shifts in the law on the suppression issues. The State also concedes, with respect to the fourth factor, that “the burden of persuasion is the same” for both suppression motions. Accordingly, we do not address factors one, two, or four further, other than to note that the questions of law embedded in them support the circuit court’s overall exercise of discretion in applying issue preclusion in this case.

¶34 Concerning the third and fifth factors, the State argues that “there is no ‘relitigation of the issue’ because the issue was never litigated as there was no testimony or evidence introduced at the first motion hearing,” and it further claims that the suppression motion in the prior case was “never ‘heard,’ or ‘submitted for determination,’ or ‘determined’” because the circuit court “granted Spencer’s motion *solely* because the State’s witness was unavailable.” These arguments are essentially rehashing whether the suppression issue was actually litigated. Because we have already addressed these arguments and concluded that the issue was actually litigated, we do not address them further.

¶35 In addition, on the third factor, the circuit court in this case aptly noted that “to the extent there was a lack of quality or a lack of evidence provided” by the State at the suppression hearing, the lack of evidence was due to the fact that the State did “not provide any witnesses and chose not to avail itself of the remedies that were available once that witness did not appear.” The court’s findings in this regard are supported by the record, and the court did not erroneously exercise its discretion when applying the third factor.

¶36 The State further argues, under the fifth factor, that “any inconvenience and burden on judicial resources of litigating whether the evidence should have been suppressed does not overcome the strong public policy supporting the State’s prosecution of drug dealing,” consistent with WIS. STAT. § 961.001(1r) (2023-24)⁸ (“Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety.”). Furthermore, the State asserts that “[w]hile Spencer and the current circuit court disagree with the way the State pursued the case,” and while the “court was expressly upset that the State was not prepared with Officer Pahl’s testimony at the initial suppression hearing, the remedy is not to punish the State by applying issue preclusion when the issue hasn’t been actually litigated or decided.”

¶37 The State’s arguments do not demonstrate that the circuit court erroneously exercised its discretion. The court was justifiably concerned that if issue preclusion did not apply, the State could, when it is unable to present some or all of its intended evidence or testimony, move to dismiss the case without prejudice and relitigate the issue, “maybe this time in front of a judge who’s more amenable.”

¶38 We view the case at hand as no different from one in which the State put forth some evidence at the suppression hearing and, after realizing that its witness was not sufficient to meet the State’s burden, asked for an adjournment to call another, more effective witness. In this hypothetical, if the circuit court granted the defendant’s motion to suppress because the State failed to meet its burden, the issue was actually litigated. In both cases, the suppression issue was

⁸ All references to the Wisconsin Statutes are to the 2023-24 version.

properly before a circuit court, the State failed to meet its burden (either because it presented no evidence or because it presented insufficient evidence), and the matter was actually litigated on a determination of law.

¶39 Moreover, in denying the State’s motion for reconsideration in this case, the circuit court addressed the State’s public policy argument regarding drug offenses, stating:

[T]he State in its brief notes that selling drugs is a serious crime. And I get to see the impact of that serious crime in my court almost every day, whether it’s in criminal law cases or family cases. The sale of drugs in our community has an incredibly negative and poisonous impact on our community and it is something that needs to be taken seriously.

Having said that, when defendants are charged with selling drugs, they enjoy a presumption of innocence. And it is up to the State to bring forward evidence and make their case so that those—the people that do sell drugs in our community are held responsible.

The State fails to address the court’s analysis. Regardless, the court’s reasoning demonstrates that it “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” See *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted).

¶40 Finally, the circuit court, when denying the State’s motion for reconsideration in this case, stated its discontent with the prosecutor’s lack of preparation in this case and in other cases. The court commented that the prosecutor, on the day of the issue preclusion hearing and nearly a month after Spencer filed his brief in support of his motion, provided merely a page of listed cases “without any other explanation or argument.” And, in fact, one of the cases cited by the prosecutor was an unpublished, per curiam opinion, in violation of

WIS. STAT. RULE 809.23(3). Additionally, after the circuit court had signed the order granting Spencer’s issue preclusion motion, the State filed a two-sentence letter, asking the court to issue a stay withholding entry of a written order until the State could file a motion for reconsideration.

¶41 The circuit court further noted that once the State did file its motion for reconsideration, the motion contained no law on the standard for reconsideration or on the authority of the court to issue and extend its stay of its order granting Spencer’s motion. The court stated that it “couldn’t agree more” with the following language from Spencer’s response to the State’s motion for reconsideration:

The State’s entire manner of litigating this matter at bar has been the same; to procrastinate, to lose an issue, and to attempt to relitigate it after it has been determined. The State could have made the arguments and cited the cases it refers to in its motion [for] reconsideration at any time between April 11th, when the defendant filed his motion to suppress, and May 9th, when the hearing was held. Rather than filing a brief or memorandum of law, it filed a list of four cases it intended to orally argue at the hearing. Now, almost a week after the hearing, i[t] attempts to obtain reconsideration by filing a four-page memorandum of law citing absolutely nothing that it may have been unaware of as of May 9th. Again, the State demonstrates that it regards itself as entitled to an endless string of mulligans.

The court went on to state that it was “unhappy with the ... pattern of lack of preparation that [the prosecutor has] brought to many cases before this one.” The court also commented that it had “just outlined a list of items that demonstrated a lack of professionalism in this case” and that it was “really disappointed by the way this case has been handled.”

¶42 The State does not address the circuit court’s analysis with respect to its frustration with the State’s handling of Spencer’s case. However, upon our

independent review, the record supports the court’s findings and its fairness determination. Ultimately, the court found that the State must be held accountable for its repeated lack of preparation and that it would not be unfair to the State to apply issue preclusion for this reason. This determination is squarely within the confines of the fairness analysis. *See Estate of Rille*, 300 Wis. 2d 1, ¶63 (stating that the “most important factor to be considered is fairness to the party against whom [issue] preclusion is asserted” (citation omitted)). Given the foregoing, we conclude that Spencer has satisfied his burden of establishing that issue preclusion should be applied.

By the Court.—Order affirmed and cause remanded for further proceedings.

Not recommended for publication in the official reports.

