



¶ 3 The respondent was convicted of criminal sexual assault in 1992. On September 6, 2005, three days before he was scheduled to be released, the State filed a petition for sexually violent person commitment under the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 to 99 (West 2004)). The petition alleged that the respondent had two previous convictions for criminal sexual assault. The petition further alleged that clinical psychologist Craig Shifrin had evaluated the respondent and diagnosed him with paraphilia and antisocial personality disorder. Finally, the petition alleged that as a result of these mental disorders, it was substantially probable that the respondent would engage in future acts of sexual violence.

¶ 4 Counsel was appointed for the respondent, and the matter was set for a probable cause hearing two days later. See 725 ILCS 207/30(b) (West 2004). At the outset of the hearing, the respondent's attorney informed the court that the respondent was waiving the probable cause determination. Counsel emphasized that he was waiving only the probable cause phase and was not admitting that he was subject to detention under the SVP Act. The court asked the respondent if he wished to waive the probable cause determination, and the respondent stated that he did. No further matters were discussed at the hearing. The same day, the State filed a jury demand. See 725 ILCS 207/35(c) (West 2004) (providing that either the State or the respondent may demand a jury).

¶ 5 The case was originally set for trial on February 21, 2006. However, at a February 9, 2006, status hearing, counsel informed the court that he and the respondent had "reached a philosophical difference" as to how to proceed in the case. Counsel explained that the respondent did not want to submit to an evaluation by a Department of Human Services (DHS) psychologist even though counsel had advised the respondent that if he refused to do so, he would not be able to have an independent evaluation. Counsel told the court that the respondent also wished to withdraw his waiver of the probable cause hearing. He wanted

to do so, his attorney explained, because he had heard that Dr. Shifrin, the psychologist who prepared the initial evaluation, was no longer employed by the Department of Corrections. The respondent believed that Dr. Shifrin had been fired and that this fact would have had a bearing on the probable cause determination, although counsel had explained to him that this would likely have no bearing on a probable cause determination.

¶ 6 The court told counsel that if he wished to withdraw as counsel, he should file a motion to withdraw and the court would consider it. The trial was reset for March 20, 2006. Prior to that setting, counsel filed a motion to withdraw, which the court granted. A second attorney was appointed to represent the respondent.

¶ 7 Trial in this matter was continued numerous additional times. The respondent refused to attend some status hearings and disrupted others. His second court-appointed attorney found a psychologist willing to evaluate the respondent, but the respondent refused to allow the evaluation to take place. In May 2007, counsel filed a motion to withdraw, citing the respondent's refusal to communicate with him.

¶ 8 In July 2007—before the court ruled on the pending motion to withdraw—the respondent filed a motion for substitution of judge for cause. After a hearing, the motion was denied. The respondent then refused to attend the next two hearings. In June 2008, the court granted the second attorney's motion to withdraw and appointed a third attorney to represent the respondent. The court noted that the respondent appeared to be deliberately causing delays in the case through his behavior. The court warned the respondent that he needed to try to work with his new attorney because the court would not "continue to appoint people for [him] under these circumstances."

¶ 9 The respondent did not heed the court's warnings. He refused even to meet with his third attorney, citing an unspecified conflict of interest. As a result, the attorney filed a motion to withdraw. The court found that by refusing to cooperate and repeatedly

discharging the attorneys appointed for him, the respondent had "in effect refused the only representation the court can grant." The court thus concluded that the respondent had waived his right to counsel and would have to proceed *pro se*. However, in July 2009, after a second motion for substitution of judge for cause and several additional delays, the court appointed a fourth attorney to represent the respondent. In January 2010, the fourth attorney asked to withdraw as counsel. The respondent indicated that he did not want her to represent him because she was not providing him with effective assistance. The court allowed counsel to withdraw and refused to appoint a fifth attorney to represent the respondent.

¶ 10 At a February 2010 status hearing, the respondent demanded a jury trial. The court denied the request, finding it to be untimely. See 725 ILCS 207/35(c) (West 2008) (providing that either party may demand a jury within 10 days after the petition is filed). The respondent informed the court that the State had previously filed a jury demand. The State then informed the court that it would withdraw its jury demand. The matter proceeded to a bench trial on March 16, 2010.

¶ 11 At the outset of the trial, the respondent told the court that he had no attorney but was not representing himself. He asked the court to appoint counsel for him. The court reminded the respondent that it had previously found that he had waived his right to counsel through his actions. After the State's attorney made his opening statement, the court asked the respondent if he would like to make an opening statement. The respondent said simply that he was not an attorney. Similar exchanges occurred throughout the trial. When the State moved to admit exhibits into evidence, the court asked the respondent if he wanted to object. Each time, the respondent told the court he was not an attorney and did not even understand what was going on. Similarly, when the State's sole witness finished testifying, the court asked the respondent if he wished to cross-examine the witness, testify on his own behalf, or present any evidence. The respondent again stated that he was not an attorney.

¶ 12 The only witness to testify at the trial was Dr. Steven Gaskell, a clinical psychologist. The respondent refused to allow Dr. Gaskell to interview him, so Dr. Gaskell had to base his opinion on the respondent's criminal history, prison records, and mental health records, and Dr. Shifrin's August 2005 report. He testified that the respondent suffered from paraphilia. Paraphilia is a condition that involves recurrent sexual fantasies, urges, or behaviors involving underage or nonconsenting individuals. Dr. Gaskell explained that the respondent's paraphilia was focused on nonconsenting individuals. He further testified that the respondent suffered from antisocial personality disorder.

¶ 13 Dr. Gaskell testified that the respondent pled guilty to two different charges of criminal sexual assault in 1987. One charge involved an incident in which the respondent invited the victim to the house of one of his family members to smoke marijuana with him. Once inside the house, he began kissing her. When she refused, the respondent locked the door, began choking the victim, and threatened to kill her if she did not keep quiet. He then sexually assaulted her. The second charge involved an incident in which the respondent got into the victim's car and attempted to take her car keys from her. When the victim resisted, the respondent pulled out a gun and sexually assaulted her.

¶ 14 The respondent was sentenced to nine years for each of the 1987 charges, to be served concurrently. He was released in 1992. While on parole, the respondent was again charged with criminal sexual assault. That charge is the basis for the instant proceedings. The circumstances underlying the charge were quite similar to those underlying the second 1987 charge. The respondent flagged down a vehicle, asked for a ride, and directed the driver to a dead-end street. There, he took her car keys and tried to kiss her. When the victim resisted, he grabbed her hair, struck her face, and sexually assaulted her. The respondent was convicted of this charge and sentenced to 25 years in prison. In addition, the respondent was convicted of a charge of vehicular invasion. The charge stemmed from an incident in which

the respondent got into the victim's vehicle at an intersection, told her that he had a gun, and attempted to sexually assault her. The respondent released the victim when three bystanders approached the vehicle. This incident also occurred in 1992 while the respondent was on parole for the 1987 charges.

¶ 15 Dr. Gaskell also testified about the respondent's treatment history. At various times during his prison term, the respondent refused to participate in sex offender treatment programs or failed to complete such programs successfully. He was discharged from one program due to disruptive behavior. Dr. Gaskell explained that a major obstacle to successful treatment for the respondent had been his unwillingness to acknowledge his guilt.

¶ 16 Dr. Gaskell testified that both he and Dr. Shifrin evaluated the respondent using diagnostic tests designed to predict the risk of reoffending. Dr. Shifrin used a test called the Hare Psychotherapy Checklist, Revised, and Dr. Gaskell used the Minnesota Sex Offender Screening Tool, Revised. He testified that both tests indicated that the respondent had a high risk of reoffending. Dr. Gaskell further testified that various factors made it more likely that the respondent would engage in future acts of sexual violence. He cited the respondent's hostility, the fact that he had antisocial personality disorder, and the fact that he committed the offense while on parole from prior sex offenses.

¶ 17 After Dr. Gaskell finished testifying, the court asked the respondent if he wished to cross-examine the witness or present any evidence of his own. As previously noted, the respondent declined to do so, stating that he was not an attorney. Instead, the respondent told the court, "I would like to give notice of appeal \*\*\*." The court replied, "Well, we're not that far along yet, but I'll certainly give you the opportunity to do that."

¶ 18 The State's attorney waived closing argument. The court told the respondent that he had the opportunity to make a closing argument if he wished to do so, but the respondent declined to do so. The court then found that the respondent was a sexually violent person

within the definition under the SVP Act. The following exchange then took place between the State's attorney and the court:

"MR. RYBAK: I have a proposed order, Your Honor, depending on whether the court wishes to set this over for further dispositional hearing or proceed to immediate—

THE COURT: I think under the circumstances I—it's not necessary—necessary for me to do so. I don't see the benefit of that.

MR. RYBAK: Okay.

THE COURT: Unless you have a better suggestion from the State. I'm satisfied with the circumstances that a commitment order is justified."

The court then addressed the respondent and explained to him his appeal rights. The court entered orders finding the respondent to be a sexually violent person and committing him to a secure facility for treatment. This appeal followed.

¶ 19 The respondent first argues that the court erred in denying his requests for a probable cause hearing. He acknowledges that he initially waived the probable cause hearing, but he asserts that he raised the issue at every subsequent status hearing. We need not determine whether the court erred in refusing to allow the respondent to withdraw his waiver of the probable cause hearing. We find that any error was harmless.

¶ 20 The Illinois Supreme Court has held that at a probable cause hearing in SVP Act proceedings, the State must demonstrate to the court that there is a " 'substantial basis for the petition.' " *In re Detention of Hardin*, 238 Ill. 2d 33, 48, 932 N.E.2d 1016, 1025 (2010) (quoting *State v. Watson*, 595 N.W.2d 403, 420 (Wis. 1999), and adopting the *Watson* court's definition of probable cause). To do this, the State must only demonstrate that there is plausible evidence to support each element it is required to prove. See *In re Detention of Hardin*, 238 Ill. 2d at 48, 932 N.E.2d at 1025. By contrast, at trial, the State must prove that

the respondent meets the statutory definition of a sexually violent person beyond a reasonable doubt. 725 ILCS 207/35(d)(1) (West 2008). Beyond a reasonable doubt is obviously a much higher standard of proof.

¶ 21 Here, the trial court found the respondent met the statutory definition of a sexually violent person beyond a reasonable doubt. The respondent does not challenge the sufficiency of the evidence to support this finding, and we believe it is amply supported by the evidence. Because the State met this much higher standard of proof, it follows that there was a substantial basis for the petition. Thus, even assuming it was error for the court to refuse to allow the respondent to revisit the probable cause issue, the error was harmless.

¶ 22 The respondent next argues that the court erred and denied him his right to the effective assistance of counsel. The SVP Act provides that a respondent has the right to be represented by counsel, including the right to have counsel appointed to represent him if he is indigent. 725 ILCS 207/25(c)(1) (West 2008). As previously noted, the court found that the respondent waived his right to counsel through his actions after he caused four attorneys to withdraw. Under the unique circumstances of this case, we find no error.

¶ 23 As previously explained, the court appointed four attorneys to represent the respondent. Three resigned due to the respondent's failure to cooperate or communicate with them. One withdrew at the request of the respondent, who refused even to meet with him. The respondent also disrupted proceedings, refused to attend hearings, refused to submit to an evaluation, and filed two motions for substitution of judge. The court found that these tactics amounted to a deliberate attempt to delay the trial. We note that ordinarily, trial on an SVP commitment petition must take place within 120 days. 725 ILCS 207/35(a) (West 2008). Trial in this case took place more than four years after the petition was filed. Under similar circumstances in the criminal context, courts have found that a defendant's "refusal to accept appointed counsel" may operate as a waiver of the right to counsel. See *People v.*

*Blaney*, 324 Ill. App. 3d 221, 226, 754 N.E.2d 405, 411 (2001); *People v. Kennedy*, 204 Ill. App. 3d 681, 684, 561 N.E.2d 1347, 1349 (1990); see also *People v. Timmons*, 233 Ill. App. 3d 591, 596, 599 N.E.2d 162, 166 (1992) (explaining that "the right to counsel of defendant's own choosing may not be employed as a weapon to thwart indefinitely the administration of justice"). Under the circumstances, we find no error in the court's ruling.

¶ 24 The respondent next argues that he was deprived of his right to a jury trial. As previously discussed, the State filed a written jury demand immediately following the first hearing in the matter, which was two days after the SVP petition was filed. The record indicates that the matter was set for a jury trial numerous times, only to be continued due to the respondent's unwillingness to cooperate with court-appointed attorneys and his refusal to attend some of the hearings. However, the first time the respondent indicated to the court that he, too, wanted a jury trial was at a July 2009 status hearing. He repeated his assertion that he wanted a trial by jury at several subsequent hearings, including the February 2010 hearing at which the State decided to withdraw its jury demand. On appeal, he argues that the court erred in ignoring these requests. We are not persuaded.

¶ 25 The SVP Act provides that either party has the right to demand a trial by jury. 725 ILCS 207/25(d), 35(c) (West 2008). The SVP Act specifically provides that the party requesting a jury trial must do so within 10 days after the SVP commitment petition is filed. It further provides that a party who demands a jury may withdraw that demand. 725 ILCS 207/35(c) (West 2008). Thus, under the express terms of the SVP Act, the respondent's statements indicating that he wanted a jury trial (even assuming they could all be construed as jury demands) were untimely.

¶ 26 We note, however, that the SVP Act is civil in nature, and provisions of the Civil Practice Law that do not conflict with provisions of the SVP Act are applicable in SVP commitment proceedings. 725 ILCS 207/20 (West 2008). Under the Civil Practice Law, if

a plaintiff demands a jury trial and subsequently withdraws that demand, a defendant may demand a jury trial "promptly after being advised" that the plaintiff's jury demand has been withdrawn. 735 ILCS 5/2-1105(a) (West 2008). The respondent does not argue that this rule applies to proceedings under the SVP Act. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (providing that arguments not argued are waived). Moreover, for two reasons, we find that it does not apply.

¶ 27 First, the rule is part of a statutory provision that directly conflicts with the jury demand provision in the SVP Act. The relevant statute provides that a plaintiff in a civil action must file a jury demand at the same time as the complaint, while a defendant must file a jury demand no later than he files his answer. 735 ILCS 5/2-1105(a) (West 2008). This is at odds with the SVP Act's provision that *either party* may file a jury demand within 10 days after the SVP commitment petition is filed. See 725 ILCS 207/35(c) (West 2008).

¶ 28 Second, the rule that a defendant may file a jury demand promptly after receiving notice that the plaintiff has withdrawn a previously filed jury demand—which is not applicable to plaintiffs—is justified by the differences in deadlines for filing an initial jury demand under the Civil Practice Law. Because a plaintiff must file a jury demand at the same time as the complaint, a defendant has no opportunity to file a jury demand until after the plaintiff has done so. In an SVP commitment proceeding, by contrast, the State may request a jury as much as 10 days after it files the petition. This gives a respondent an opportunity to make his own jury demand prior to the deadline for the State to do so. Thus, we believe that the legislature's decision to omit similar language from the statute governing the time for filing jury demands in SVP proceedings was a deliberate choice. We find no error in the court's ruling that the respondent's jury demand was not timely.

¶ 29 The respondent next contends that the court erred in failing to make an express finding that it was substantially probable that he would commit future acts of sexual violence. We

agree with the State that such a finding is not required.

¶ 30 In support of his argument that commitment under the SVP Act requires this explicit finding, the respondent cites *People v. Masterson*, 207 Ill. 2d 305, 798 N.E.2d 735 (2003). There, our supreme court held that in order for a commitment order under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 to 12 (West 2010)) to pass constitutional muster, the order must "be accompanied by an explicit finding that it is 'substantially probable' [that] the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined." *Masterson*, 207 Ill. 2d at 330, 798 N.E.2d at 749.

¶ 31 Although the respondent correctly states the holding of *Masterson*, his argument overlooks a key difference between the Sexually Dangerous Persons Act (SDP Act) and the SVP Act and the role that difference played in the supreme court's holding. The SDP Act requires the State to prove that a respondent has a mental disorder associated with the propensity to commit sex crimes and that the respondent "has actually demonstrated that propensity." *Masterson*, 207 Ill. 2d at 318-19, 798 N.E.2d at 743. The *Masterson* court emphasized that, "Unlike the SVP [Act], the SDP [Act] does not *specifically* address the probability or likelihood that the subject of the proceeding will engage in sexual offenses in the future." (Emphasis in original.) *Masterson*, 207 Ill. 2d at 319, 798 N.E.2d at 743.

¶ 32 This difference is significant because the United States Supreme Court has held that in order to comport with principles of substantive due process, commitment statutes such as the SDP Act and SVP Act must require evidence of " 'past sexually violent behavior and a present mental condition that creates a likelihood of such conduct in the future.' " *Masterson*, 207 Ill. 2d at 320, 798 N.E.2d at 744 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997)). The *Masterson* court concluded that the SDP Act only meets this standard if the SVP Act's requirement of a "substantial probability" of future sex offenses is read into it. *Masterson*, 207 Ill. 2d at 330, 798 N.E.2d at 749.

¶ 33 By contrast, the SVP Act expressly includes in its definition the element of substantial probability of future offenses. 725 ILCS 207/15(b) (West 2008). Thus, a finding that the respondent is an SVP necessarily includes a finding that it is substantially probable that the respondent will engage in future acts of sexual violence. Thus, no additional explicit finding to that effect is required. See *In re Detention of Varner*, 207 Ill. 2d 425, 432-33, 800 N.E.2d 794, 798-99 (2003).

¶ 34 Finally, the respondent argues that the court erred in failing to conduct a dispositional hearing prior to entering an order committing him to a secure facility. We agree.

¶ 35 The SVP Act requires two distinct determinations. First, either a court or a jury must find that the respondent is a sexually violent person, as defined by the SVP Act. 725 ILCS 207/40(a) (West 2008). This means that the court must find that (1) the respondent has been convicted of a sexually violent offense, (2) the respondent has been diagnosed with a mental condition, and (3) as a result of the mental condition, it is substantially probable that the respondent will commit future sexually violent offenses. 725 ILCS 207/15(b) (West 2008). If the respondent is found to be a sexually violent person, the court must enter a judgment committing the respondent to the care and custody of DHS. 725 ILCS 207/40(a) (West 2008). The court must then determine whether the respondent should be placed in a secure facility for treatment or released conditionally. 725 ILCS 207/40(b)(2) (West 2008).

¶ 36 The SVP Act outlines the procedure to be followed by courts in making the latter determination. It provides, in relevant part, as follows:

"The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered [finding] that the [respondent] is a sexually violent person. If the court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department [of Human Services] to

conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order." 725 ILCS 207/40(b)(1) (West 2008).

¶ 37 There have been few cases interpreting this statutory requirement. The Second District considered it in the case of *In re Detention of Varner*, 315 Ill. App. 3d 626, 734 N.E.2d 226 (2000). There, after a jury found the respondent to be a sexually violent person, the trial court asked counsel for both parties if they had any additional evidence to present related to the appropriate placement for the respondent. *In re Detention of Varner*, 315 Ill. App. 3d at 633, 734 N.E.2d at 232. Although neither party offered any additional evidence, the court questioned the respondent about where he would live if released conditionally. The respondent told the court that he could live with his brother in Ohio. The State suggested that the hearing be continued to allow a DHS clinical psychologist to prepare a report addressing the feasibility of monitoring the respondent's treatment in Ohio. *In re Detention of Varner*, 315 Ill. App. 3d at 633, 734 N.E.2d at 232. The court stated that it had sufficient information to determine the appropriate disposition, allowed both parties to make closing argument, and ordered the respondent committed to a secure facility. *In re Detention of Varner*, 315 Ill. App. 3d at 633, 734 N.E.2d at 232.

¶ 38 On appeal, the respondent acknowledged that the SVP Act does not require a *separate* dispositional hearing. *In re Detention of Varner*, 315 Ill. App. 3d at 639, 734 N.E.2d at 237. He argued, however, that under the circumstances of that case, the trial court should have continued the hearing to allow the parties to present additional evidence related to the most appropriate placement. *In re Detention of Varner*, 315 Ill. App. 3d at 638, 734 N.E.2d at 236. The appeals court rejected this contention. The court explained that the decision to continue the proceedings is within the sound discretion of the trial court, and it found no abuse of that discretion where the trial court had sufficient information before it to make the necessary

determination. *In re Detention of Varner*, 315 Ill. App. 3d at 639, 734 N.E.2d at 237.

¶ 39 The Third District next considered the question in *People v. Winterhalter*, 313 Ill. App. 3d 972, 730 N.E.2d 1158 (2000). There, a jury found the respondent to be an SVP, and the trial judge then stated that a hearing was necessary to determine whether the respondent should be committed to a secure facility or conditionally released. *Winterhalter*, 313 Ill. App. 3d at 980, 730 N.E.2d at 1165. The respondent asked that the hearing be continued to allow a psychiatrist to prepare a treatment recommendation report before the court rendered its decision on the appropriate placement for him. However, the court found it unnecessary to continue the proceedings because it had enough evidence before it to make its decision. *Winterhalter*, 313 Ill. App. 3d at 980, 730 N.E.2d at 1165. Before ruling, however, the court gave both parties the opportunity to present additional evidence and gave the respondent an opportunity to testify. *Winterhalter*, 313 Ill. App. 3d at 980, 730 N.E.2d at 1165. In addition, both parties presented arguments related to the issue of the most appropriate placement. *Winterhalter*, 313 Ill. App. 3d at 981, 730 N.E.2d at 1165.

¶ 40 On appeal, the respondent argued that the trial court "should have conducted a formal dispositional hearing" before finding him subject to commitment in a secure facility. *Winterhalter*, 313 Ill. App. 3d at 979, 730 N.E.2d at 1164. In rejecting this contention, the Third District first noted that "under the plain language of the [SVP] Act, the trial court is required to conduct a hearing before entering its commitment order." *Winterhalter*, 313 Ill. App. 3d at 981, 730 N.E.2d at 1165; see 725 ILCS 207/40(b)(1) (West 2008). The court further stated that, under the plain language of the statute, the trial court "may in its discretion" continue the proceedings if it lacks sufficient evidence. *Winterhalter*, 313 Ill. App. 3d at 981, 730 N.E.2d at 1165; see 725 ILCS 207/40(b)(1) (West 2008). The court treated the issue before it as whether the procedures followed by the trial court in that case were sufficient to meet the requirement of a dispositional hearing. The court noted that the

respondent had the opportunity to testify and present additional evidence and that both parties actually argued the issue. The court concluded that this was sufficient. *Winterhalter*, 313 Ill. App. 3d at 981, 730 N.E.2d at 1165.

¶ 41 The Second District revisited the question in *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 754 N.E.2d 484 (2001). There, after a bench trial, the trial court entered a judgment finding the respondent to be a sexually violent person and then ordered him committed to a secure facility. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 9, 754 N.E.2d at 487. The opinion does not specify what, if any, proceedings occurred after the court found the respondent to be a sexually violent person.

¶ 42 The respondent argued on appeal that the court abused its discretion by not continuing the proceedings to obtain more information related to the most appropriate placement for him. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 12, 754 N.E.2d at 489. The Second District found that the trial court had sufficient information before it to make the determination, and therefore concluded that no abuse of discretion had occurred. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 13, 754 N.E.2d at 489-90.

¶ 43 Before reaching this conclusion, the court noted that it was declining to follow the Third District's decision in *Winterhalter*. The court explained that although the *Winterhalter* court "held that the trial court is required to conduct a hearing before entering its commitment order," appeals courts "are not bound by the decisions" of other appellate districts. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 12-13, 754 N.E.2d at 489. We note that it is not entirely clear whether the court meant that a hearing is not required *at all* or simply that a *separate* hearing is not required. Because the issue raised by the respondent there was whether the trial court erred in failing to continue the matter, we believe the latter interpretation appears more likely. However, to the extent the statement can be read to mean that no hearing is required, we find it unpersuasive and choose not to follow it. As the Third

District correctly stated in *Winterhalter*, the statute *expressly* requires the trial court to enter a commitment order "pursuant to a hearing" held after the respondent has been adjudicated to be a sexually violent person. *Winterhalter*, 313 Ill. App. 3d at 980, 730 N.E.2d at 1165; see 725 ILCS 207/40(b)(1) (West 2008).

¶ 44 Thus, the issue before us is not whether the trial court was required to hold a hearing, but whether the court complied with the statutory requirement that it do so. In response to the respondent's argument that the court below did not hold a dispositional hearing, the State argues that (1) there is a split of authority among Illinois courts on the issue of whether a hearing is required and (2) the respondent received an adequate dispositional hearing because he had the opportunity to present additional evidence or arguments had he chosen to do so. We reject both of these arguments.

¶ 45 In support of its contention that there is a split of authority on the issue, the State cites *In re Detention of Tittlebach*. As previously discussed, we do not read the *In re Detention of Tittlebach* decision as holding that no hearing is required. We also note that, at oral argument, the State acknowledged that a hearing is necessary.

¶ 46 We also disagree with the State's assertion that the respondent was given an opportunity to present evidence and arguments related to appropriate placement. Once the court determined that the respondent was a sexually violent person, the State's attorney noted that the court could either continue the proceedings or proceed directly to the dispositional phase. The court stated that a continuance was not necessary because it felt that it had enough information before it to find that placement in a secure facility was the most appropriate setting for the respondent. The court immediately went on to inform the respondent that a written order would be entered to that effect.

¶ 47 This procedure stands in stark contrast to what occurred in both *Winterhalter* and *In re Detention of Varner*. In both of those cases, the parties were given the opportunity to

present additional evidence directly related to the question of the most appropriate placement for the respondents. In addition, in both cases, the parties actually presented arguments related to this question. Here, there was no substantive discussion of the question of placement at all and no real opportunity for either party to provide any input on the matter. We acknowledge that the respondent made it difficult for the court. As we discussed at length earlier, he refused to participate in any aspect of the trial, telling the court repeatedly that he was not an attorney. Nevertheless, the legislature expressly provided that the court must hold some sort of hearing to consider the question of appropriate placement once finding that the respondent is a sexually violent person. That did not occur in this case, and the cause must therefore be remanded to allow consideration of the placement issue.

¶ 48 We conclude that the court erred in failing to hold a dispositional hearing in this matter; however, we find no other errors in the court's rulings. We therefore affirm the judgment finding the respondent to be a sexually violent person, but we reverse the judgment ordering him committed to a secure facility, and we remand for a dispositional hearing.

¶ 49 Affirmed in part and reversed in part; cause remanded for further proceedings.