

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Matthew Gibbon on August 26, 2016

INTRODUCTION

Slightly after midnight on August 26, 2016, Nevada Highway Patrol (“NHP”) Trooper Shawn Peckham conducted a vehicle stop on a four-door white Cadillac for having no registration sticker on the back license plate. The Cadillac pulled over without incident and Trooper Peckham observed three people in the Cadillac: a driver, front passenger and backseat passenger. Trooper Peckham informed the driver why he had stopped the Cadillac and received identification information from the driver and the backseat passenger. He then returned to his patrol vehicle. Matthew Gibbon (“Decedent”), the backseat passenger, told the other occupants of the Cadillac that he had given the trooper false information and that he was leaving. Trooper Peckham observed the Decedent exit the backseat of the vehicle with a backpack and noticed he was holding a firearm. Decedent ran west toward a local business. Trooper Peckham began to issue commands for Decedent to stop. In response, Decedent turned toward the trooper and fired his weapon at Trooper Peckham. A bullet struck the trooper in the chest area. Trooper Peckham returned fired and struck Decedent three (3) times including the head. Decedent was declared dead at the scene.

INCIDENT DETAIL

At 12:05 am on August 26, 2016, Trooper Shawn Peckham conducted a vehicle stop on Boulder Highway of a four-door white Cadillac with Nevada plates (“Cadillac”) for not having a registration sticker on the rear license plate. Trooper Peckham was driving a marked NHP vehicle and was wearing a standard NHP uniform with multiple law enforcement identifiers including a badge. The Cadillac pulled over without incident. The stop was conducted on the southbound side of Boulder Highway next to a Progressive Insurance office parking lot and across the street from the Boulder Station Casino. The vehicle stop was recorded on Trooper Peckham’s dashboard camera.

Inside the Cadillac were three occupants: driver T. U., front passenger K. B. and third passenger Decedent. Trooper Peckham informed T.U. why she was stopped and asked for identification. Trooper Peckham noticed Decedent in the backseat sweating and acting nervous. He asked Decedent if he had used narcotics recently. Decedent replied he used two or three hours ago. Trooper Peckham requested Decedent's identification information and Decedent gave him false information. After receiving the above information, Trooper Peckham returned to his patrol vehicle and began to conduct records checks on the information provided by the Cadillac occupants. After about five (5) minutes, Trooper Peckham observed Decedent exit the Cadillac's rear driver's side passenger door and run in front of his patrol vehicle toward the Progressive Insurance parking lot. As he ran in front of the patrol vehicle, Trooper Peckham observed a firearm in Decedent's right hand and backpack in the other hand.

Trooper Peckham exited his vehicle, pursued Decedent and began to issue commands for Decedent to stop. However, before Trooper Peckham could finish his sentence, Decedent turned and fired at the trooper, striking the trooper's badge in his left chest area and ricocheting off his vest. Trooper Peckham returned fire and broadcasted "Shots Fired!". Decedent collapsed by a fence in the Progressive Insurance parking lot.

In response to Trooper Peckham's broadcast. Las Vegas Metropolitan Police Department ("LVMPD") Officers Pacifico and Alley quickly responded from the Boulder Station hotel and NHP Troopers Butner and Bohl also quickly responded from their locations on US-95. Medical was called to the scene and pronounced Decedent dead at the scene.

The Clark County District Attorney's Office has completed its review of the August 26, 2016, death of Decedent Matthew Gibbon. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Trooper Peckham were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Trooper Peckham. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on March 10, 2017.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the trooper was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the NHP or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

INVESTIGATION

Information from Witnesses

I. Civilian Witnesses

T.U.

T.U. told investigators that on the night of the incident she received a phone call from her son K.B. stating that he was at Four Mile bar on Boulder Highway and needed a ride to his residence on Tropicana. She agreed to give her son a ride. T.U. drove to the Four Mile bar in the Cadillac. She pulled into the bar's parking lot. K.B. entered the vehicle on the front passenger side. Decedent was with K.B and entered the Cadillac from the rear driver side. K.B. told T.U. that Decedent was a friend he recently met. T.U. never met Decedent before and believed K.B. only told her a moniker when he introduced him to T.U.

T.U. was driving south on Boulder Highway when she realized she was getting pulled over by a marked police vehicle. As T.U. was pulling over, the Decedent told her not to stop and to keep driving. T.U. ignored Decedent and pulled over to the right without incident. T.U. said she was approached by the trooper and he explained why she was stopped. The trooper also asked the male in the backseat for his name. T.U. did not remember what name the Decedent provided to the trooper.

After the trooper returned to his vehicle, T.U. heard the back door of the vehicle open and Decedent leave the vehicle. T.U. heard the trooper issue commands similar to "stop, get down on the ground" but was not sure of the exact wording. Right afterwards, T.U. heard a series of gunshots. She did not see any of the gunshots. After the gunshots stopped, T.U. asked the trooper if he was okay. The trooper responded "Yes, thank you for asking." T.U. stayed in the vehicle and kept her hands in the air until other officers arrived.

K.B.

K.B. told investigators that he walked to the area of Boulder Highway and US-95 to purchase methamphetamine. As he walked past the Four Mile bar, K.B. saw Decedent, who he knew by the moniker "Jersey" and knew Decedent sold methamphetamine. K.B. approached Decedent and Decedent agreed to give K.B. some methamphetamine in return for a ride to the area of Maryland Parkway and Karen Avenue. K.B. agreed and called his mother, T.U., in order to secure a ride. T.U. agreed to pick K.B. up at the Four Mile bar and drive K.B. to his residence. When T.U. arrived in the Cadillac, K.B. got in the front passenger seat and Decedent sat in the rear driver's side seat.

While driving south on Boulder Highway passing US-95, a marked police vehicle signaled for T.U. to pull over. As T.U. was pulling over, Decedent became agitated and told T.U. not to stop the vehicle. T.U. refused and stopped the Cadillac in front of the Progressive Insurance office on Boulder Highway. The trooper approached and asked for identification information of everyone in the Cadillac.

After the trooper left the Cadillac and returned to his patrol vehicle, Decedent “freaked out” and told K.B. that he had given a fake name and social security number. He also said he was going to get out of the Cadillac and run. Decedent asked K.B. how many officers were behind the Cadillac.

K.B. saw Decedent run toward the fence by the Progressive Insurance office. He heard the trooper say “get on the ground” and then gunshots. He did not see any of the gunshots. K.B. remained in the Cadillac until other police officers took him out of the vehicle and separated him from T.U. before they were interviewed.

II. Law Enforcement Statements

Trooper Brittany Burtner

Trooper Burtner was in the area of US-95 and Las Vegas Boulevard when she heard another trooper broadcast a vehicle stop on Boulder Highway. A short time later, Trooper Burtner heard a broadcast that the suspect was running. Trooper Burtner activated her emergency equipment and headed toward the vehicle stop. While in route, the same trooper broadcasted that shots were fired and that he was hit by gunfire.

Trooper Burtner arrived at the scene and observed a Cadillac, two (2) NHP vehicles and a LVMPD bike. She took the male occupant into custody. The male told Trooper Burtner “I didn’t know he was going to do that.” Trooper Burtner went to check on Trooper Peckham and acted as a monitor officer.

Trooper Brandon Bohl

Trooper Bohl was in the area of US-95 and Flamingo Boulevard when he heard Trooper Peckham broadcast a “Code Red” based on a suspect running. Trooper Bohl knew Trooper Peckham was on Boulder Highway and headed that way. While en route, he heard Trooper Peckham broadcast shots fired. Trooper Bohl arrived at the scene and observed a Cadillac with two occupants and a LVMPD officer with Trooper Peckham at the rear of Trooper Peckham’s NHP vehicle. Trooper Bohl helped take the two occupants of the Cadillac into custody.

Trooper Bohl walked to where the suspect was and noted he was unresponsive. He asked Trooper Peckham if he had been shot and Trooper Peckham showed him his badge which had been struck by a bullet. Trooper Bohl removed Trooper Peckham's badge to check for any further injuries. Trooper Bohl noted redness in Trooper Peckham's chest area.

Trooper Bohl stated he asked Trooper Peckham what happened. Trooper Peckham told him that during the vehicle stop that the Decedent, who was in the backseat, was acting nervous and sweating profusely. Trooper Peckham said he asked Decedent for identification information and returned to his vehicle. While in his patrol vehicle, he witnessed Decedent exit the Cadillac with a black handgun and a bag and run toward the Progressive Insurance parking lot. Trooper Peckham moved a few feet away from his vehicle to better observe Decedent and keep an eye on the other occupants of the Cadillac. Decedent shot at him two times and Trooper Peckham said he returned fire.

Officer Vincent Pacifico

Officer Pacifico was working a special event at Boulder Station with Officer Dana Alley. He was on bike and heard two (2) gunshots, followed by four (4) and then additional four (4). He observed flashing red and blue lights from Boulder Highway and headed in that direction. After crossing Boulder Highway, he noted that a marked NHP vehicle was the source of flashing red and blue lights. He also observed that the NHP vehicle was facing a white Cadillac. Officer Pacifico made contact with Trooper Peckham who stated he was covering two (2) people in the Cadillac and that a suspect was down in the parking lot. Officer Pacifico approached Decedent and observed a black firearm laying by his left hand. For safety reasons, he moved the firearm with his foot and dragged it a couple feet away from the Decedent.

Officer Dana Alley

Officer Alley gave similar information to Officer Pacifico. He took the female driver of the Cadillac into custody. She told Officer Alley, "I don't know what's going on. Is the cop ok?"

SCENE WALK-THROUGH

On August 26, 2016, Trooper Peckham provided a walk-through of the scene in the presence of investigators. Trooper Peckham told investigators that he pulled over the Cadillac and made contact with T.U. He identified the three occupants of the vehicle and returned to his marked patrol vehicle to run a records check.

While conducting a record check, Trooper Peckham observed Decedent exit the Cadillac and run behind the rear of the Cadillac and in front of his patrol vehicle. Trooper Peckham noticed a firearm in Decedent's right hand and a bag in his left. Trooper Peckham ran behind his vehicle and then toward Decedent's position in order to apprehend Decedent. Trooper Peckham stated that when he crossed over the sidewalk toward Decedent, Decedent turned toward him and fired two (2) shots in his direction. One (1) round struck his NHP badge in the left chest area. Trooper Peckham moved about three (3) to five (5) feet closer and fired a volley of shots toward Decedent. Decedent ran toward the gate by the Progressive Insurance office and again pointed his firearm toward Trooper Peckham. Trooper Peckham fired a second volley of shots which incapacitated Decedent.

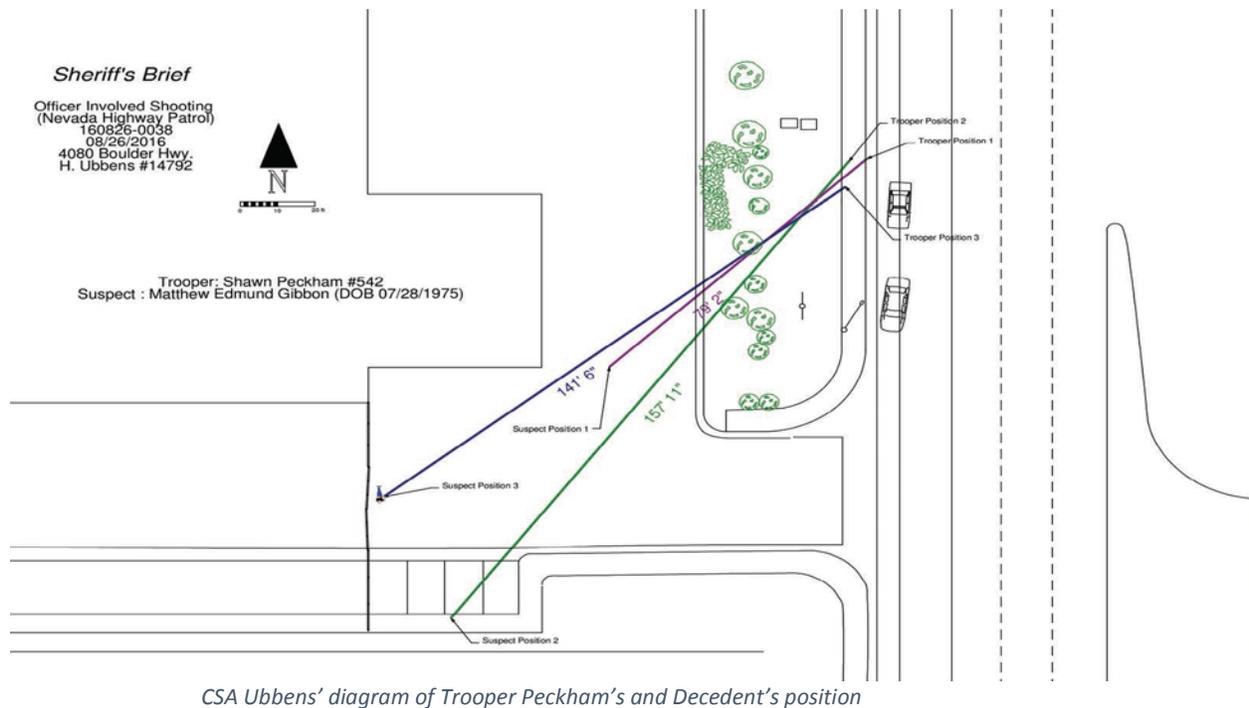
Afterwards, Trooper Peckham stated LVMPD officers and NHP troopers arrived and assisted in taking the remaining occupants of the Cadillac into custody.

OFFICER WEAPON COUNTDOWN

On August 26, 2016, Trooper Peckham had his duty weapon counted down at LVMPD headquarters.

At the completion of the countdown, it was determined that Trooper Peckham had two (2) rounds remaining in his magazine and discharged his firearm eleven (11) times.

DESCRIPTION AND EVIDENCE FROM THE SCENE



The Cadillac was parked facing south along the west side of the southbound lanes of Boulder Highway, just north of the entrance into the Progressive Insurance building. Trooper Peckham's NHP patrol vehicle was parked facing south directly behind the Cadillac with both the headlights and spotlights on. On the ground directly behind the NHP vehicle were two (2) LVMPD bicycles. Three (3) "WIN 40 S&W" cartridge cases were recovered under/near the bicycles. Two (2) additional cartridge with the head stamp "WIN 40 S&W" were located northwest of Trooper Peckham's vehicle and six (6) were recovered in the landscaped area also northwest of the NHP patrol vehicle. A damaged metal badge bearing "Nevada Department of Public Safety" was located in a landscaped area next to the NHP patrol vehicle. Another part of the badge bearing "Trooper" was found on a southbound lane of Boulder Highway,

A cartridge case bearing head stamp "AGUILA 9mm" was located in the Progressive Insurance parking lot. The Decedent was located by an iron gate located south of the Progressive Insurance building. Next to his feet was a Sig Sauer P2022, 9mm, semi-automatic firearm. The firearm was damaged on the left side of the grip area. A bullet fragment was located in the side release of the firearm. The firearm had a round in the chamber and a magazine with fourteen (14) additional cartridges including two (2) with the head stamp "AGUILA 9mm".

Decedent had a black backpack on his back with straps around both shoulders. During an examination of the backpack, investigators located a black wallet containing items in the name of Matthew Gibbon, a black firearm magazine for a 9mm containing thirteen (13)

cartridges, two (2) cellular phones, \$329.78 in US currency, a plastic container with a white round pill and two (2) clear plastic baggies containing an unknown white crystalline substance. The two baggies had combined gross weight of 52.2 grams.



Trooper Peckham's badge after being shot by Decedent

FIREARM EXAMINATION

On September 26, 2016, Forensic Scientist Kathy Geil submitted the Firearms & Tool Marks Report. Geil noted that the 9mm Sig Sauer found by Decedent had damage to the frame and grip. Geil determined that 9mm casing found at the scene with the head stamp "AGUILA 9mm" was fired by said 9mm Sig Sauer firearm. The corresponding magazine has a capacity of fifteen (15) cartridges.

VIDEO EVIDENCE

Trooper Peckham's NHP patrol vehicle contained two cameras. One of the cameras pointed forward toward the front of the vehicle. Footage from that camera showed the vehicle stop of the Cadillac, Trooper Peckham's interaction with the occupants of the Cadillac and Decedent exiting the Cadillac holding a firearm and backpack running in a westerly direction. Audio was also recorded.



NHP Dashboard front facing camera view of Decedent fleeing from Cadillac with firearm and backpack

The second camera in the NHP vehicle points toward the backseat and did not capture anything of importance.

AUTOPSY

On August 27, 2016, an autopsy was performed on the body of Decedent by Doctor Lisa Gavin of the Clark County Coroner's Office. Decedent had a gunshot wound to his head, chest and left hand. The cause of his death was gunshot wound to the head.

Per the Toxicology Report, Decedent was found to have blood levels of 2100 ng/ml of methamphetamine in his system along with 220 ng/ml of amphetamine. The report noted that individuals with blood levels of 200-600 ng/ml of methamphetamine have been reported to exhibit violent and irrational behavior.

TIMELINE

Time	Description of Event / Action	Source
12:04:31	Trooper Peckham activated his lights to initiate a traffic stop on the Cadillac driven by T.U. T.U. stopped in front of Progressive Insurance on Boulder Highway. Trooper Peckham approached and made contact with the occupants of the vehicle. Trooper Peckham advised T.U. he pulled her over because there was no registration sticker on the vehicle's license plate. Decedent is in the backseat of the Cadillac	Dashboard camera video
12:04:54 – 12:10:36	Trooper Peckham obtained the occupants' information and returned to his vehicle.	Dashboard camera video
12:10:52 – 12:11:06	Trooper Peckham returned to T.U.'s vehicle to check the VIN and returned to his vehicle.	Dashboard camera video
12:13:39 – 12:13:42	Decedent opened the rear driver's side door and exited the vehicle. Decedent had a firearm in his right hand and a backpack in his left hand. Decedent ran west into the Progressive Insurance parking lot. Trooper Peckham began to issue verbal commands for Decedent to stop. Decedent fired at Trooper Peckham, striking him once in the left chest area.	Dashboard camera video / walk-through
12:13:54 – 12:14:00	Trooper Peckham returned fire, shooting six (6) times, and broadcasted, "Shots Fired!"	Dashboard camera video
12:14:07	Trooper Peckham fired five (5) more times.	Dashboard camera video

Time	Description of Event / Action	Source
12:15:31	LVMPD Officers Pacifico and Alley arrived. Trooper Peckham and Officer Pacifico approached Decedent and moved the gun.	Dashboard camera video / interviews

LEGAL ANALYSIS

The District Attorney’s Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

I. THE USE OF DEADLY FORCE IN SELF DEFENSE/DEFENSE OF ANOTHER

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ...” against the other person.¹ NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished ...

NRS 200.160(1).

The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

¹ NRS 200.120(3)(a) defines a crime of violence: “Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and,
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence that a [killing was in defense of another exists], the State must prove beyond a reasonable doubt that Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must disprove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent was reasonably perceived to pose an imminent danger to Trooper Peckham and other occupants of the Cadillac. Decedent fled the vehicle stop while clearly holding a black semiautomatic firearm. While Trooper Peckham was in the process of giving Decedent commands to stop, Decedent turned toward the trooper and fired his weapon. Trooper Peckham was struck by Decedent's bullet and only avoided great bodily injury and/or death due to the protection he was afforded by his badge and vest. Decedent continued to present a grave danger to Trooper Peckham as he continued to

aim his firearm at the trooper. Decedent's actions left Trooper Peckham with no other choice but to return fire for his personal safety. It should also be noted that Decedent's position put the general public at risk as well as the occupants of the Cadillac since Decedent was facing toward Boulder Highway as he fired at Trooper Peckham. Decedent's actions placed Trooper Peckham in a reasonable fear of being shot, and in fear that the Decedent might shoot a member of the general population. Trooper Peckham had a duty to respond to the perceived deadly threat to himself and/or civilians in the line of fire, and use deadly force to prevent any further harm.

II. JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

"Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty." NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer's use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. *See* 1985 Nev. Op. Att'y Gen. 47 (1985).

In this case, at the time Trooper Peckham fired his weapon, the facts demonstrate that he had probable cause to believe that the Decedent posed a threat of serious physical harm to himself or other persons. Decedent was armed with a semiautomatic firearm and firing at Trooper Peckham. The circumstances demonstrate Trooper Peckham fired his weapons with a reasonable belief that Decedent was a threat to the safety of himself and members of the general population. In light of this evidence, Trooper Peckham actions were legally justified and appropriate "in the discharge of a legal duty."

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Nevada Highway Patrol Trooper Peckham were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be "fully acquitted and discharged." (NRS 200.190).

As there is no factual or legal basis upon which to charge, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.