

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE GENERAL SESSIONS COURT
CASE NO. 2018-GS-21-00066

STATE OF SOUTH CAROLINA,)
)
Plaintiff)

vs.)

WYATT SHANE ALTMAN,)
)
Defendant)

ORDER GRANTING IMMUNITY
FROM PROSECUTION

RECEIVED

JAN 31 2019

2019 JAN -4 PM 3:19
DORIS PULLIOS O'HARA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

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SC Court of Appeals

This matter came before the Court on or about December 21, 2018, pursuant to the Defendant's July 6, 2018, Motion to Dismiss Pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et seq. — hereinafter referred to as the "Act"). The Defendant is charged with Murder, wherein it is alleged that on July 23, 2017, the Defendant, Wyatt Shane Altman, shot and killed Dylan Wayne Hanna. The Defendant admits shooting Mr. Hanna, but asserts that he is absolved from prosecution pursuant to the immunity granted in the "Act" (S.C. Code Ann. § 16-11-450). Present at the hearing was Deputy Solicitor, Todd S. Tucker. The Defendant was present and represented by Henry M. Anderson, Jr. For the reasons set forth below, I hereby grant the Defendant's Motion to Dismiss and hold that the Defendant has immunity from prosecution under Section 16-11-450(A) of the Act.

I. FINDINGS OF FACT

Based on the testimony before the Court, together with the exhibits introduced at the evidentiary hearings, the Court makes the following findings of fact:

1. I find that the Court had the opportunity to hear the testimony of the Defendant and personally

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Doris Pullios O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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observe him during the course of his testimony. Taking this into consideration and the fact that other testimony and the exhibits corroborate and are consistent with his testimony, I find that the Defendant was a credible witness and worthy of belief.

2. I find that the house and land located at 2232 Durant Cemetery Road, Johnsonville, South Carolina, is in Florence County. That the property where the incident took place, was owned by the Defendant's mother and that the Defendant lived there and had been living there for several years. The Defendant was entitled to the peaceful possession of the premises.
3. I find that the Defendant was a close friend of Dylan Wayne Hanna, who is the deceased. On the night of July 22, 2017, and into the early morning hours of July 23, 2017, there were Snapchat messages made to a group message titled "Fortys and Shortys". Evidently, there was an argument going on between the people involved in the Snapchat as to which was better, a "Black and Mild" or a "Marlboro Light." The written copies of this group "chat" was entered into evidence by the stipulation of both parties and introduced as State's Exhibit No. 2. I find that on at least eight (8) occasions the Defendant, Wyatt Shane Altman, told Mr. Hanna to stop bullying the boys involved in the Snapchat and to leave it alone. Throughout that conversation, Mr. Hanna indicated on multiple occasions that he wanted to fight Wyatt Altman. He also indicated that he would fight some other individuals at the beach.
4. I find that the Defendant and Mr. Hanna, were texting back and forth to each other on July 23, 2017 leading up to this incident. A written transcript of these text messages was introduced without objection as State's Exhibit No. 3.
5. There is no doubt that there was a lot of tension and cussing going on between both parties. On eleven (11) different occasions during these text messages, Mr. Hanna threatens to, "beat yo ass!" to Mr. Altman. I find that there was conversation about Mr. Altman owning his deceased father's

firearm. Mr. Hanna is the one that first brought up the conversation about a firearm. In one text Mr. Hanna tells Mr. Altman, "I hope you pull that motherfucker, cause I'm stomp a mud hole in your ass and take it from you."

6. One of the last text messages sent by Mr. Hanna was telling Mr. Altman that, "if you pull the gun you better fuckin kill me cause if you don't I'm gone drag yo ass and finesse your daddy pistol from you!" Shortly after that text message Mr. Hanna and Matthew Lamb went to the Defendant's house. At no point were they ever invited to the house.
7. I find that there is testimony from Defendant Altman that Mr. Hanna had been in several fights. There is testimony from State's witnesses Matthew Lamb, as well as, Brittany Cagle that once Mr. Hanna got his mind made up to fight there was nothing that could stop him. In one text, Mr. Hanna himself writes to Mr. Altman, "You already know when someone says something and I flip out its no calming me down." It was stated by several witnesses that he had a bad temper, as well as, various stages of that temper.
8. I find that on July 23, 2017, Mr. Hanna went to the home of Defendant Altman and actually walked onto the front porch. From State's Exhibit No. 1 which contained multiple photos, as well as, the testimony of the Defendant and what was corroborated by other evidence, Mr. Hanna was in the process of entering the home and/or was standing on the threshold of the door when the fatal shot was fired. Prior to that time there was a lot of threats and cursing exchanged between the Defendant and Mr. Hanna. Mr. Hanna was told repeatedly to get off of the front porch and leave the property. Blood was found on the threshold of said door, as well as, a lot of blood on the front porch.
9. I find that after Mr. Hanna was shot, the Defendant called his mother, Sandy Poston, and explained to her what happened. Mrs. Poston hung up with her son and called 911. Mrs. Poston and her

husband then returned to the home. During that time Matthew Lamb called his girlfriend Brittany Cagle and she came to the home as well. It is undisputed that the decedent was lying on the front porch. The porch is approximately 5-6 feet wide. That would lend further credence to the fact that Mr. Hanna was walking into the house and/or on the threshold when he was shot. It is also undisputed that Mr. Hanna's feet were either inside the house or extremely close to being inside the house. Mrs. Sandy Poston testified that she moved his feet so that she could shut the door so that it would not hit him.

10. It is undisputed that the Defendant told Matthew Lamb that he didn't mean to do it and that it was an accident. It is undisputed that the Defendant told his mother, Sandy Poston, that it was an accident. It is undisputed that he told at least two (2) Law Enforcement Officers that it was an accident. However, it is also undisputed that the Defendant testified that he was scared. He testified that he was scared of what would happen to him because he knew that Mr. Hanna was capable of causing serious bodily injury.
11. During the testimony of Matthew Lamb, it appeared that he did not remember some of the things he had told Law Enforcement a few days after this incident. The Defense introduced his testimony that was taped and recorded by the Florence County Sheriff's Office. I have had an opportunity to listen to that recording in chambers and find that it is undisputed that there was an argument between Mr. Hanna and the Defendant. It is undisputed that Matthew Lamb drove Mr. Hanna to the Defendant's house and after a few moments the conversation got heated at which time the Defendant told Mr. Hanna to get out of his yard and Mr. Hanna asked him what he was going to do about it. According to Defense's Exhibit No. 1, Matthew Lamb indicated that, Mr. Hanna told the Defendant that they both knew he wouldn't shoot him. The Defendant responded "Get off of my porch or I will." Mr. Hanna indicated that he was going to have to show him. More words

were exchanged and according to Matthew Lamb, Mr. Hanna said "If you don't come out I'm going to run up in your house." The Defendant said something and at that point Mr. Hanna either took a step forward or acted like he was taking a step forward and the shot rang out.

12. Law Enforcement was called to the scene and the Defendant talked with Michael Quick who is an Officer with the Florence County Sheriff's Office and later talked with Investigator Owens. Their testimony is consistent with that of the Defendant.

13. The Court finds that Mr. Hanna either entered the house or was stepping toward the defendant while the Defendant was in his house. The Court further finds that Mr. Hanna had previously issued numerous threats to the Defendant. This Court finds that Mr. Hanna was in the process of unlawfully and forcibly entering the Defendant's home through his front door. Mr. Hanna was angry and threatening the Defendant. The Defendant told Mr. Hanna not to come to his house. Once Mr. Hanna was at the house, the Defendant told him to get off of his porch and to get out of his yard. It was at this time that the Defendant, feeling like he had no other option and being afraid for his life, shot the pistol one (1) time hitting Mr. Hanna. The shot appears to have been fired by the Defendant from the middle of his den and Mr. Hanna was either walking into the house or at the threshold of the door.

14. When the gun went off, Mr. Hanna fell back onto the front porch. There is a lot of blood shown on the porch in State's Exhibit 1 which would support the statements of the Defendant.

15. As the Court stated above, the Court observed and listened to the Defendant's testimony, as well as, the testimony of the other witnesses and found the Defendant to be a credible witness. In addition to the Court's observations, I find that the following evidence corroborated and was consistent with the Defendant's version of events:

1. State's Exhibit 1 are photographs showing that the porch was very narrow. Additional

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photographs show the front door, foyer, threshold, shotgun near the door, front porch, width of the front porch, the chair where Mr. Lamb was sitting.

- (a) State's Exhibit 2 shows the Snapchat messages between the Mr. Hanna, as well as, other individuals.
- (b) State's Exhibit 3 shows text messages between Mr. Hanna and the Defendant.
- (c) Defendant's Exhibit 1 is a video of Matthew Lamb's statement in which he gave a much more detailed account of what actually happened.

II. LAW

The Defendant has moved for dismissal of the indictment and immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16- 11-450(A) (Supp. 2013). The Act provides in pertinent part:

Section 16-11-420 provides:

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(C) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(D) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

Section 16-11-440 provides, in pertinent part:

(A) A person is presumed to have a reasonable fear of imminent

peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Section 16-11-450(A) provides:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.

The South Carolina Supreme Court held in State v. Duncan, 709 S.E.2d 662 (2011) that a claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. In State v. Curry, 752 S.E.2d 263 (2013), the Supreme Court held that where a defendant claims immunity under the Act, a valid claim of self-defense must exist, and the trial

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court must necessarily consider the elements of self-defense in determining the defendant's entitlement to immunity, including all elements of self-defense, save the duty to retreat. It is well settled in South Carolina that there are four elements required by law to establish a case of self-defense:

- (1) The defendant must be without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life.
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in his particular instance.

Curry at 372, n. 4, citing State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). It is the fourth element, the duty to retreat that is excused under the Act. Curry at 372.

Under Curry, supra, the defendant has the burden of establishing the applicability of the Act and self-defense by a preponderance of the evidence standard. To establish immunity under 16-11-440(C), a defendant must, by a preponderance of the evidence, establish the following:

- (1) He was not engaged in an unlawful activity;
- (2) He was attacked in a place where he had a right to be; and
- (3) He reasonably believed that his actions were necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in S.C. Code Ann. § 16-1-60.

A. Immunity under 16-11-440(A)

The relevant language for the Court to consider under 16-11-440(A)(1) is whether Mr. Hanna was in the process of unlawfully and forcibly entering the Defendant's residence, or had unlawfully and forcibly entered the Defendant's residence, and the relevant language for the Court

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to consider under 16-11-440(A)(2) is whether the Defendant knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The State has argued that this section of the Act is not applicable to the Defendant because he claimed it was an accident. I find that if all other factors are present, whether the actual firing of a firearm was intentional or accidental is of no consequence to the right to immunity, if it was done in protecting one's self from an unlawful attack. A person can have an accident while in fear of death or great bodily injury.

Based on the evidence presented at the evidentiary hearing, I find that, at the very minimum, Mr. Hanna coming to the Defendant's house was uninvited. He was threatening the Defendant with physical bodily harm. He was either entering the house or appearing to enter the house when he was shot. I therefore find that Mr. Hanna's entry or attempted entry was unlawful as set forth in Section 16-11-440(A)(1).

Furthermore, I find that Mr. Hanna's entry or attempted entry was forceful. Mr. Altman testified that the front storm door was closed or could have been slightly ajar at the time Mr. Hanna entered or attempted to enter his residence. Mr. Hanna entered the Defendant's residence after making threats of physical violence to the Defendant. If Mr. Hanna opened the door, his entry was clearly with force. If the door was slightly ajar and he pushed it open wide enough to gain entry, this clearly was with force as well.

B. Immunity pursuant to Sections 16-11-440(C) and 16-11-450(A) of the Act.

This provision involves the so-called "stand your ground" portion of the Act, found in S.C. Code Ann. § 16-11-440(C). To establish immunity under the "stand your ground" portion of the Act, a defendant must by a preponderance of the evidence establish the following:

A person who is not engaged in an unlawful activity and who is

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attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

To simplify, the elements of this defense, as it applies to the instant case are:

- (1) He was not engaged in an unlawful activity;
- (2) He was attacked in a place where he had a right to be; and
- (3) He reasonably believed that his actions were necessary to prevent death or great bodily injury to herself or another person or to prevent the commission of a violent crime as defined in S.C. Code Ann. § 16-1-60.

The Court finds that there is no evidence that the Defendant was engaged in an illegal activity.

The Court finds that the Defendant was attacked in a place where he had a right to be, his residence. Here, there is no question that the Defendant was in his dwelling or residence at the time he shot Mr. Hanna and therefore 16-11-440(C) is applicable to this case.

The Court finds that the Defendant had a reasonable belief that Mr. Hanna was going to commit attempted murder (16-3-29), assault and battery with intent to kill (16-3-620) or assault and battery of a high and aggravated nature (16-3-600(B)), and the Defendant had a reasonable belief that it was necessary to fire the fatal shot to prevent that from happening.

In conclusion, the Court finds by a preponderance of the evidence that the Defendant has established all the elements required under 16-11-4-40(C) of the Act and is entitled to immunity from prosecution pursuant to Section 16-11-450(A) of the Act.

C. The accused has made out a valid claim for self-defense.

Mr. Altman has a colorable claim to self-defense under State v. Davis, supra, and its progeny which counsel that the accused must demonstrate the elements of self-defense by a

Preponderance of the Evidence before receiving immunity. Those elements, as stated above, are as follows:

- (1) The defendant must be without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life.

The first element of self-defense under State v. Davis, supra is that the Defendant must be without fault in bringing on the difficulty. The Court finds by a Preponderance of the Evidence that the Defendant was without fault in bringing the difficulty.

The Defendant did not invite Mr. Hanna over to his house. The Defendant, in fact, told him to leave several times. The Defendant ordered him off of his porch and out of his yard several times. The Court finds that the Defendant's acts is no way amounted to misconduct or were willingly and knowingly calculated to lead to conflict. The Court also finds that the Defendant did not use language so opprobrious as would be reasonably calculated to bring on the difficulty and did not actually contribute to bringing on the encounter. State v. Woodham, 160 S.E. 885, 889 (1931).

The Court finds that the Defendant was not committing any act in violation of the law, nor was his action reasonably calculated to produce the attack on him by Mr. Hanna. State v. Slater, 644 S.E.2d 50, 52 (2007) and State v. Bryant, 520 S.E.2d 319 (1999). The Court further finds that the actions of the Defendant did not amount to misconduct, nor were his actions willingly and knowingly calculated to lead to conflict. The Court further finds that the Defendant did not provoke or initiate the assault and he is not deprived of his right to rely on self-defense.

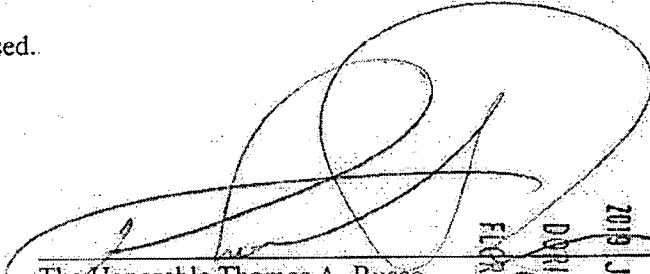
As discussed above, Mr. Altman had a reasonable belief that he was in danger at the time he shot Mr. Hanna. I find that this belief would be shared by a person of ordinary firmness under the same circumstances as were present at the time Mr. Altman discharged his weapon.

Under the mandate of State v. Curry, supra, the Court has examined the elements of self-defense set forth in State v. Davis, supra and finds that the Defendant has demonstrated the elements of self-defense to the Court by a Preponderance of the Evidence. The Court has also found by a Preponderance of the Evidence that the Defendant has proven all the elements required under Section 16-11-440(A)(1)(2). The Court therefore finds that by a Preponderance of the Evidence the Defendant is entitled to immunity from prosecution pursuant to Section 16-11-450(A) of the Act.

IV. CONCLUSION

Based on the evidence presented to the Court at the evidentiary hearings, the Findings of Fact made by the Court above, the Court's determination that the Defendant has a right to rely on Sections 16-11-440(A)(1)(2) and (C), and the Court's finding that the Defendant has demonstrated the elements of self-defense by a Preponderance of the Evidence, the Court concludes as a matter of law that the Defendant is immune from criminal prosecution under Section 16-11-450(A) of the Act and the case is accordingly dismissed.

IT IS SO ORDERED.



The Honorable Thomas A. Russo
Circuit Court Judge
Twelfth Judicial Circuit

Florence, South Carolina

January 4, 2019

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FLORENCE COUNTY, S.C.



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2018-000066

The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 23, 2019

Mr. Todd S. Tucker, Esquire
180 N. Irby Street
Florence SC 29501

Re: The State v. Wyatt S. Altman
Appellate Case No. 2019-000063

Dear Counsel:

The Court has received your notice of appeal dated January 14, 2019. Within ten (10) days of the date of this letter you must provide the Court with a copy of the order of Judge Russo.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Robert Michael Dudek, Esquire
Henry Morris Anderson, Jr., Esquire



The South Carolina Court of Appeals

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January 23, 2019

Mr. Todd S. Tucker, Esquire
180 N. Irby Street
Florence, SC 29501

Re: The State v. Wyatt S. Altman
Appellate Case No. 2019-000063

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

The State, Appellant,

v.

Wyatt Shane Altman, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Robert Michael Dudek, Esquire
Henry Morris Anderson, Jr., Esquire

The State of South Carolina



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E.L. Clements, III
Solicitor

January 28, 2019

South Carolina Court of Appeals
V. Clare Allen, Deputy Clerk
Post Office Box 11629
Columbia, SC 29201

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JAN 31 2019

SC Court of Appeals

Re: The State v. Wyatt S. Altman
Appellate Case No. 2019-000063

Dear Ms. Allen:

Per your notice dated, January 23, 2019, I am enclosing a copy of the order of Judge Russo. I apologize for the oversight regarding this matter.

Very truly yours,

Handwritten signature of Todd S. Tucker in blue ink, with a circular stamp containing the initials 'TS' to the right.

Todd S. Tucker
Deputy Solicitor
Twelfth Judicial Circuit

TST/gaj

cc: Alan McCrory Wilson, Esquire
John Benjamin, Esquire
Robert Michael Dudek, Esquire
Henry Morris Anderson, Jr., Esquire

Solicitor's Office
180 North Irby Street, Box Q
Florence, SC 29501



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