

THE SMARTER THE HOME, THE SMALLER THE CASTLE?

Scott Meyer

“Every man’s house is his castle.” Even as these words attenuate further into anachronism, the ideas that they represent still resonate with the homeowner of today. Most often attributed to *Semayne’s Case*,¹ the adage provides not only a catchy slogan, but is the namesake for the Castle Doctrine.² A curious piece of jurisprudence, at common law the Castle Doctrine abrogated the duty to retreat from harm in one’s own home, allowing the invoker to defend themselves and their hearth against forcible entry and felonies.³ This view has been enthusiastically embraced by at least some American courts, as eloquently stated by Judge Benjamin N. Cardozo:

In case a man is assailed in his own house, he "need not fly as far as he can, as in other cases of se defendendo, for he hath the protection of his house to excuse him from flying, for that would be to give up the possession of his house to his adversary by his flight." Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home. That there is, in such a situation, no duty to retreat is, we think, the settled law in the United States as in England.⁴

More than a century later, it seems that this “settled law” may in fact be facing a new challenger: the smart home.

THE CASTLE DOCTRINE

Today, most states in the U.S. allow some form of the Castle Doctrine.⁵ However, the original common law exception has “evolved into a confusing patchwork of rules” as states have

¹ 77 Eng. Rep. 194 (1604); *see, e.g., Minnesota v. Carter*, 525 U.S. 83, 94 (1998) (“As far back as *Semayne’s Case* of 1604 . . . the King’s Bench proclaimed that ‘the house of any one is not a castle or privilege but for himself, and shall not extend to protect any person who flies to his house’”).

² ENCYCLOPEDIA OF HOUSING 49 (Andrew Carswell ed., SAGE Publications 2d ed. 2012).

³ *Id.*

⁴ *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914).

⁵ *See* South University, *Castle Doctrine from State to State*, SOUTH U. BLOG (Jul. 15, 2011), <https://www.southuniversity.edu/whoweare/newsroom/blog/castle-doctrine-from-state-to-state-46514>; *see also* Cora Currier, *The 24 States That Have Sweeping Self-Defense Laws Just Like Florida’s*, PROPUBLICA (Mar. 22, 2012, 12:05 PM), <https://www.propublica.org/article/the-23-states-that-have-sweeping-self-defense-laws-just-like-floridas>.

expanded and modified it through their statutes.⁶ Some have even expanded far beyond the Castle Doctrine exception to embrace “stand-your-ground” laws, which remove any duty to retreat regardless of your location (allowing you to stand your ground, instead of retreating to the wall).⁷ Rather than examine the laws of each state individually, this article will consider the Castle Doctrine as it exists at common law, in its holistic form. While this may hinder direct analogy, its reasoning should remain applicable to most jurisdictions as they begin to grapple with smart home technology. Specifically, a key question is whether there is a threshold where smart home technology must become a considered variable when invoking the Castle Doctrine. To crudely analogize why this matters, imagine a company that hires purely based on candidates’ GPA. Now, imagine that company decides that at a certain point past-employment history is also relevant to the hiring process and should be considered. The value of a candidate's GPA just ceded some amount of consideration to this new variable (employment history). In short, if a threshold where smart home technology must be considered does exist, it implies that the “smarter” a home becomes, the more diffuse its castle doctrine protections.

The Castle Doctrine can be neatly summarized by the following:

A person attacked at home can use deadly force in self-defense. The castle doctrine allows a person in that person's own home to use deadly force in self-defense with no duty of retreat. In jurisdictions that require retreat, if one is available, before using deadly force in self-defense, the requirement of retreat does not apply in one's home, which one is entitled to defend, as Sir Edward Coke said, like one's castle. Thus the castle doctrine is an exception to the limitation (in some jurisdictions) on the defense of self-defense.⁸

Importantly, regardless of its current prevalence in U.S. jurisprudence, the Castle Doctrine is the exception, not the rule,

⁶ Catherine L. Carpenter, *Of the Enemy Within, the Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 657 (2003).

⁷ Compare FLA. STAT. ANN. § 776.012 (West 2019) (stand-your-ground: “[a] person . . . does not have a duty to retreat and has the right to stand his or her ground . . . [if] in a place where he or she has a right to be”) (emphasis added) with *State v. Glowacki*, 630 N.W.2d 392, 398 (Minn. 2001) (Castle Doctrine: “there is no duty to retreat *from the home* when acting in self-defense against an intruder.”) (emphasis added).

⁸ *Castle Doctrine*, WOLTERS KLUWEVER BOUVIER L. DICTIONARY DESK ED. (2012).

allowing a person who would usually have a “duty to retreat” to defend themselves with deadly force in their home.⁹ The theory behind this exception can appear more conclusory than reasoned (my home is my castle, ergo I can defend my castle), but the basic premise is borne of practicality. In essence, if you cannot defend yourself in your home, what is your remaining option? Where else would you go?¹⁰

To justify deadly force at common law, the Castle Doctrine requires a *reasonable* belief that one is in imminent danger of serious bodily harm from an intruder.¹¹ The reasonableness of that belief is meant to be (purportedly) an objective standard, asking what a reasonable person would do in similar circumstances.¹²

This reasonableness requirement is both the crux, and potentially the Achilles heel, of the Castle Doctrine. For example, inviting a neighbor over on the pretext of hospitality and then murdering them when they cross your threshold would clearly not be reasonable. However, what if an intruder has entered and you know the police are minutes away? Or instead, perhaps the intruder enters a room that locks them in, and now they pose no threat? As the Internet of Things continues to power smart home technology, these hypotheticals may find themselves moved from the armchair to the courtroom.

RISE OF THE SMART HOME

“Smart Home” is a catch-all term for the more general concept of home automation.¹³ This idea is not a new one: washing machines, water heaters, and refrigerators are all examples of devices that automate formerly labor intensive chores (washing, heating water, storing food). However, unlike these past examples, modern smart homes are driven by the Internet of Things (IoT).¹⁴

⁹ ENCYCLOPEDIA OF HOUSING, *supra* note 2, at 49.

¹⁰ *See e.g., People v. Aiken*, 828 N.E.2d 74, 77 (N.Y. 2005) (“The home exception to the duty to retreat reflects two interrelated concepts—defense of one’s home, and defense of one’s person and family”); *State v. Carothers*, 594 N.W.2d 897, 901 (Minn. 1999) (“Mandating a duty to retreat for defense of dwelling claims will force people to leave their homes by the back door while their family members are exposed to danger and their houses are burgled”); *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914) (“If assailed [in the home], he may stand his ground, and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home”).

¹¹ ENCYCLOPEDIA OF HOUSING, *supra* note 2, at 49.

¹² *Id.*

¹³ *See* Jim Hill, *The smart home: A glossary guide for the perplexed*, T3 (Sep. 12, 2015), <https://www.t3.com/features/the-smart-home-guide>.

¹⁴ Molly Edmonds & Nathan Chandler, *How Smart Homes Work*, HOWSTUFFWORKS.COM (Mar. 25, 2008), <https://home.howstuffworks.com/smart-home.htm>.

The IoT is a rather opaque term of art for the quite simple notion that just about anything can be connected to the internet.¹⁵ Paralleling the widespread availability of broadband internet, and the expansion of smartphone technology, industries have started producing products that can connect to the internet and be controlled remotely.¹⁶ These products—such as smart-refrigerators, smart-speakers, smart-light bulbs, etc.—are emblematic of the smart home movement, in that they share this ability to connect to and instantaneously be controlled through the internet, whether inside or outside of the home.¹⁷

Of the products that encompass the smart home market, some of the most popular include: thermostats, light bulbs, security cameras, door locks, plugs, and speakers.¹⁸ While the actual necessity of having lightbulbs that can change color through use of a cell phone application may be debatable, the fact remains that the IoT market is only expected to increase.¹⁹ Within that market, nowhere are smart home products more popular globally than in the United States.²⁰ A recent forecast indicated that by 2021, 28 percent of U.S. households will be “smart homes.”²¹

Consider the implications of these IoT products. Homeowners can now install locks on their doors that notify them when the door is used.²² Further, owners can lock and unlock doors with their phones and even provide temporary access codes to their

¹⁵ Jacob Morgan, *A Simple Explanation of “The Internet of Things”*, FORBES (May 13, 2014, 12:05 AM), <https://www.forbes.com/sites/jacobmorgan/2014/05/13/simple-explanation-internet-things-that-anyone-can-understand/#244719831d09>.

¹⁶ See e.g., *Kenmore Smart Appliances*, KENMORE (last visited Oct. 28, 2019), <https://www.kenmore.com/products/smart-appliances/>.

¹⁷ See, e.g., Rich Brown, *The best smart home devices of 2019*, CNET (Oct. 10, 2019, 3:55 PM), <https://www.cnet.com/news/the-best-smart-home-devices-of-2019-amazon-alexa-google-assistant-apple-homekit-smart-speaker/>.

¹⁸ *The number of smart homes in Europe and North America reached 45 million in 2017*, IOT BUS. NEWS (Sept. 24, 2018), <https://iotbusinessnews.com/2018/09/24/20413-the-number-of-smart-homes-in-europe-and-north-america-reached-45-million-in-2017/>.

¹⁹ Shanhong Liu, *Size of the Internet of Things (IoT) market worldwide from 2017 to 2025 (in billion U.S. dollars)*, STATISTICA (Jul. 2, 2019), <https://www.statista.com/statistics/976313/global-iot-market-size/>.

²⁰ Eric Griffith, *The US Is the Undisputed Leader in Smart Homes*, PC MAG. (Mar. 14, 2019, 5:00 AM), <https://www.pcmag.com/news/367137/the-us-is-the-undisputed-leader-in-smart-homes>.

²¹ Mike Paxton, *Smart Homes In The U.S. Becoming More Common, But Still Face Challenges*, S&P GLOBAL (Jun. 14, 2017, 1:45 PM), <https://www.spglobal.com/marketintelligence/en/news-insights/blog/smart-homes-in-the-u-s-becoming-more-common-but-still-face-challenges>.

²² John R. Delany, *The Best Smart Locks for 2019*, PC MAG. (Jul. 31, 2019, 2:45 PM), <https://www.pcmag.com/article/344336/the-best-smart-locks>.

guests.²³ And here is the challenge. Imagine a scenario where a homeowner is woken by a notification that their front door is ajar. Thinking quickly, they lock all other doors in the house remotely from their phone and call the police. Would they still have reasonable belief of imminent danger?

Moving from inside the house to outside, consider the rise of smart home security cameras. Current models can operate day and night with high definition video, and have motion-activated alerts, built-in alarm sirens, and even facial recognition.²⁴ Further, most models can be installed either outside or inside the home.²⁵ Imagine a homeowner receives an alert that someone is prowling outside, well before they reach the property. If they call the police, and then lie in wait for the potential intruder, attacking them when they enter, can they still claim they acted reasonably? Would it matter if the camera automatically forwarded its footage to the police to alert them of the potential crime?

Now, consider the nucleus of the smart home: the virtual assistant. Products like Google Assistant, or Amazon Alexa, can be used to control multiple smart devices.²⁶ This single point of interaction is arguably the driving force behind the rise of smart homes.²⁷ By being able to manipulate all these products remotely, through a single interface, users likely perceive an increase in value. If users had to carry around a separate pager for each smart device they owned, there can be little doubt that this industry would have failed. The nominal value of individually controlling one's home's locks, thermostat, refrigerator, etc. can hardly be considered worth having to carry around a number of devices equal to each of those individual products.

Imagine one last hypothetical. This time the homeowner is again awoken by a phone alert that a door has been opened. The alert then further indicates that the homeowner's virtual assistant has taken mitigating actions. Using the facial recognition on the doorway's camera, combined with pattern recognition that the owner rarely comes and goes at 2 a.m., the virtual assistant has

²³ *Id.*

²⁴ See Megan Wollerton, *The best home security cameras of 2019*, CNET (Oct. 9, 2019, 7:42 PM), <https://www.cnet.com/news/the-top-home-security-cameras-2019-arlo/>.

²⁵ *Id.*

²⁶ See e.g., David Priest & Megan Wollerton, *The top 10 Amazon Alexa devices for 2020*, CNET (Feb. 21, 2020, 9:50 AM), <https://www.cnet.com/news/the-top-amazon-alexa-devices-for-2020-echo-dot-ring-arlo-flex/>; Alina Bradford & Erika Rawes, *The best Google Home-compatible devices for 2019*, DIGITAL TRENDS (Jul. 31, 2019, 6:41 PM), <https://www.digitaltrends.com/home/best-google-home-compatible-devices/>.

²⁷ See Morgan, *supra* note 15.

determined this is an intruder. It has locked all remaining doors, activates an alarm, and calls the police, independent of the owner. Now, under these circumstances, can a homeowner reasonably claim they feared imminent danger if they murder the intruder?²⁸ Further expanding this hypothetical, can the mitigating action the smart home takes, which might weaken a Castle Doctrine defense, be undermined by the subsequent reaction of the intruder? Unfortunately, as with most legal conundrums, this one quickly devolves into “turtles all the way down.”²⁹

These hypotheticals are not rhetorical, and different people will no doubt land on different sides of them. However, the overarching question is not whether these specific instances are examples where the Castle Doctrine should not apply; it is whether these are factors the court need even consider. If the intelligence of the home becomes a consideration, then the sophistication of the technology used is merely a datapoint to be considered on a spectrum. That datapoint will likely not be dispositive in any single Castle Doctrine inquiry, but the spectrum it lies on will mark a fundamental shift in the idea that the home is sacrosanct simply because it is the home. In short, a smarter home could become inversely proportional to the level of protection afforded by the Castle Doctrine. This question, which is at least partially rooted in the technology of today, is emblematic of a much broader question: is there a point where the intelligence of technology involved eclipses objective reasonableness?³⁰

CONCLUSION

As smart homes continue to proliferate, judges will be forced increasingly to weigh external factors in determining if someone acted reasonably. The Castle Doctrine originated as an exception to the duty to retreat, not the default. Courts will have to grapple with whether this exception can be affected by the technology of the day,

²⁸ Sidestepping the argument of false positives in such a situation, let us assume that this intruder is truly a brigand, and not simply a late-calling acquaintance.

²⁹ John R. Ross, Constraints on Variables in Syntax (Sept. 13, 1967) (unpublished Ph.D. dissertation, Mass. Inst. Tech.), <https://dspace.mit.edu/handle/1721.1/15166>.

³⁰ Given the “confusing patchwork of rules” that represent the Castle Doctrine (or similar more expansive doctrines) in the United States today, this question will almost certainly have to be answered on a state by state basis. For places like Florida, which have expanded to stand-your-ground laws, perhaps these questions will not be relevant at all until similar “smart” technology is developed for outside the home. Regardless of the length of the spectrum though, simply acknowledging that technology is a variable to be considered would mark an enormous paradigm shift in affirmative defenses.

or if the Castle Doctrine can remain a bright-line rule, regardless of technology the home contains.