

“A Man’s Home is His Castle” Not Exactly

By Thomas J. Carr

The recent incident involving a teenage boy and a Delmar homeowner has sparked a fierce debate among Capital Region residents. The case involved what appeared to be a relatively harmless teenage prank, a group of teenagers ringing someone’s doorbell only to run off into the night.

However in this case, a startled homeowner confronted the group, gave chase and tackled one of the youths to the ground. He then brought the boy into his home and waited for Bethlehem Police to arrive.

The homeowner, Daniel Van Plew, was ultimately charged with endangering the welfare of a child, a misdemeanor. If convicted, Van Plew could face up to one year in jail.

The case brings to mind a tragic situation in Buffalo, where a local man entered mistakenly entered the wrong home while drunk, approached the homeowner, and was then shot and killed. The homeowner was not charged.

According to Tully Rinckey Partner Tom Carr, the difference in that case was that the confrontation took place inside the home. “Once you cross the threshold of the interior of the home, the law changes,” he said. However, even when that threshold has been breached, you are still under a legal obligation to retreat from danger if at all possible.

While many states have what’s called the “castle doctrine,” New York provides no such legal protection to homeowners. New York Penal Law section 35 states that physical force can be used only when attempting to prevent a burglary or arson to the home.

Carr advises that it is best to err on the side of caution. “If you are going to physically detain someone, you better be sure a felony has been committed,” he said. “Best thing is to call the police and let them handle it.”

There are currently 31 states with some form of “castle doctrine.”