



Nov/Dec 2005 Volume 74 Number 6

Used with permission from  
**The Hennepin Lawyer**  
membership publication of the  
Hennepin County Bar Association  
612-752-6600 [thl@hcba.org](mailto:thl@hcba.org)



**Christopher P. Renz**  
Contributing Author

Mr. Renz is an attorney in the litigation group of Thomsen & Nybeck, PA. His practice includes serving as the city prosecutor for the City of Edina and the Metropolitan Airports Commission.

# THEY PROTESTETH TOO MUCH, METHINKS

## WHAT'S WRONG WITH CLAIM OF RIGHT, AS APPLIED

Trespass is a crime in the state of Minnesota. Trespass is charged by prosecuting attorneys in a variety of instances, including when people enter the property of another and refuse to leave in the name of a cause—people commonly referred to as “protestors.” The section of the Minnesota Trespass Statute that is most commonly charged contains an interesting provision commonly known as “claim of right.” It is on this provision that protestors and others routinely hang their hat in an attempt to avoid criminal prosecution.

As an example, your neighbor wholeheartedly believes that you are responsible for hunting birds in violation of migratory bird treaties. Despite your own belief that in fact your hunting does not violate such treaties, and your explanation of the same, your neighbor, an ornithologist, remains committed to her beliefs. To draw attention to her belief regarding your treaty violation, your neighbor sets up camp on the front porch of your home and refuses to leave despite your demands. Your neighbor is arrested and cited for trespass. She defends solely on the grounds that because she wholeheartedly believed you were violating the treaty and harming protected birds, she had a right to be on your private property.

This article will demonstrate that your neighbor’s claimed reason for being on your property does not constitute a legally recognized defense to the crime of trespass. This article will make this demonstration by examining the particulars of the claim of right, as well as common misunderstandings about it.

### THE STATUTE

The crime of trespass, as defined by current Minnesota statute,<sup>1</sup> occurs when a person

trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

Minn. Stat. § 609.605, subd. 1(b)(3) (hereinafter “Trespass Statute”).

In 1963, Minnesota’s criminal provisions were revised.<sup>2</sup> The previous statutes governing trespass, Minn. Stat. §§ 621.57 and 621.35 (1962), were replaced by the current Trespass Statute. The Advisory Committee Comments to the Trespass Statute explicitly reference the former statutes as being superseded and explain that the phrase “without claim of right” in the clause is intended only to cover bona fide claims of right, not false claims. The former statute, which the phrase was intended to replace, was far more explicit regarding those intended to be beyond the reach of the statute prohibiting trespass:

Every person who has no right of possession and who refuses to depart from and surrender possession of property when ordered to do so by the owner thereof, and who thereafter wilfully continues to trespass upon such property, shall be guilty of a misdemeanor; provided, that this section shall not apply in any case where immediately prior thereto there existed between *the owner and the person in possession the relationship of landlord and tenant, vendor and vendee, of*

*mortgagor and mortgagee, or their respective successors or assigns.*

(emphasis added) Minn. Stat. § 621.57 (1962).

According to Minnesota courts, the reason for the Legislature's insertion of the claim of right language into the trespassing statute is to protect an innocent trespasser from criminal prosecution.

*State v. Quinnell*, 277 Minn. 63, 70-71, 151 N.W.2d 598, 604 (1967) (cited in *State v. Brechon*, 352 N.W.2d 745, 749 (Minn. 1984)). The Brechon Court stated that if "the defendant has a claim of right, he lacks the criminal intent which is the gravamen of the offense." 352 N.W.2d at 749. In fact, a lack of claim of right has to be disproved by the prosecution as an element of the offense.

The question then becomes whether your bird-loving neighbor is an innocent trespasser who lacks the criminal intent necessary to the crime of trespass.

#### PROPERTY INTERESTS AS THE ORIGIN OF TRESPASS

Property is often understood as a "bundle of sticks," within which the right to exclude others is one of the most essential sticks. Cynthia J. Estlund, *Labor, Property, and Sovereignty After Lechmere*, 46 Stan. L. Rev. 305, 336 (1994). This concept of property rights, including exclusion of others from private property, results in trespass laws, such as the Trespass Statute, which make it a crime to enter private property of another without the owner's consent or remaining after being asked to leave.

#### Minnesota Common Law on Claim of Right

Minnesota courts have properly defined a bona fide claim of right within the bounds of property interests—the very interests that are the source of statutes prohibiting trespass. As a reflection of the property-based nature of the crime of trespass, the Minnesota Supreme Court, in its seminal case on the Trespass Statute, noted that the

type of evidence that the prosecution would typically use to infer that a defendant had no claim of right would be "in the realm of property law." *State v. Brechon*, 352 N.W.2d 745, 750 (Minn. 1984).<sup>3</sup> The Brechon Court gave examples of the type of evidence that were appropriate to offer for purposes of proving or disproving claim of right: title, right of possession and permission. The Brechon Court went



on to explicitly state that once the state has presented evidence negating claim of right, the burden shifts to the defendant who may offer "evidence of his reasonable belief that he has a property right, such as that of an owner, tenant, lessee, licensee or invitee." (emphasis added). The most telling of the statements in Brechon defining claim of right sets forth that which is excluded from the inquiry: "Subjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right." The Minnesota Supreme Court in Brechon—the last case in which it visited the claim of right concept in depth—properly focused claim of right under the Trespass Statute on property interests.

Even in the prior seminal case on claim of right under the Trespass Statute—*State v. Hoyt*—the Minnesota Supreme Court did not move away from property interests as its attention focused on whether the defendant had been granted permission by someone with the authority to grant such permission. 304 N.W.2d 884, 889 (Minn. 1981). Mistakenly, the Hoyt decision is sometimes pointed to by courts for the unfounded proposition that so long as defendants reasonably and in good faith believed they had a right to be on the property, regardless of the nature of their reason for the belief, the defendants could avoid prosecution under claim of right. Nothing in the Hoyt decision, however, suggests that claim of right exists outside of property interests.<sup>4</sup> Rather, the Hoyt decision was based around the concept of permission to be on the property, a concept central to property rights.

#### Other Jurisdictions on Claim of Right

The issue of convicting individuals for the crime of trespass when the individuals believe they have a valid, but not a property-related, reason for being on the property has occurred in a litany of cases around the country. In those instances, the courts have appropriately confined excuses for avoiding conviction under the trespass statute to property-related reasons and have dismissed attempts by defendants to avoid convictions for trespass on the grounds that they believed so deeply in a cause that they had a right to be there. For example, where a former cantor of a temple insisted on returning to the temple's



**LAW LIBRARY CONSULTANTS, INC.™**

**When experience counts...**

- Vendor Negotiations
- Information Audits & Planning
- Intranet Design & Management
- Library Management & Looseleaf Filing
- Knowledge Management
- Placement & Substitution Services

Contact: **KATHLEEN BEDOR**

(612) 823-3945 • FAX (612) 823-0437  
kbedor@lawlibraryconsultants.com

property based on his belief that he was a minister of the temple, despite having been ordered to leave by appropriate temple members and the police, the former cantor was convicted of trespass and his conviction affirmed. *People v. Tuchinsky*, 419 N.Y.S.2d 843, 844 (N.Y. Dist. Ct. 1979) (cited in *Brechon*, 352 N.W.2d 745, 750 (Minn. 1984)). In affirming the former cantor's conviction, the *Tuchinsky* court wisely stated that one "does not acquire immunity from prosecution for trespass by closing one's eyes to reality and stubbornly asserting an 'honest belief' to remain where one is not privileged to be."

Likewise, the Court of Appeals for the District of Columbia upheld the convictions of abortion protestors who trespassed at an abortion clinic by blocking entrances and chaining themselves to tables. *Gaetano v. U.S.*, 406 A.2d 1291 (D.C. 1979) (cited in *Brechon*, 352 N.W.2d at 749). While the protestors argued that they didn't have the intent to be convicted of trespass because they reasonably believed they had a right to enter the clinic, the Court of Appeals

disagreed, affirming their conviction and explaining:

The clear rule of law...is that a reasonable belief in an individual's right to remain on property not owned or possessed by that individual must be based in the pure indicia of innocence. There must be some evidence that, for example, the individual had no reason to know that he was trespassing on the rights of others. Perhaps the individual could reasonably believe that he had title or a possessory interest in the land, or that the land was publicly owned. Perhaps he could believe that he was invited onto the land. The "bona fide belief" defense was not meant to, and does not exonerate individuals who believe they have a right, or even a duty, to violate the law in order to effect a moral, social, or political purpose, regardless of the genuineness of the belief or the popularity of the purpose.

*Id.* at 1294.

The same Court of Appeals, three years previous to the *Gaetano* decision, upheld the conviction of an individual who refused to leave White House grounds after the closing hour and who argued that he had a right to be on the property to read a statement protesting the government's policy in Asia by reading from the Paris Peace Accords. *Leiss v. U.S.*, 364 A.2d 803, 804 (D.C. 1979) (cited in *Brechon*, 352 N.W.2d at 749). The *Leiss* Court did not find merit in the defendant's argument that he had a bona fide right to be on the property, stating:

Appellant's real defense seems to be not that he was innocent of any intent to violate the law, but rather that the self-ordained sincerity and substance of his convictions placed him above the law. Whatever the source of inspiration for appellant's intentional transgression of a valid statute, it does not immunize him from the consequences of his act. Under our system of justice, the depth or character of an individual's political beliefs can have no bearing upon either his obligation

to adhere to the law or the courts' duty of impartial adjudication.

*Id.* at 809.

Other courts have likewise restricted the bona fide belief concept to a belief by the defendant that he or she possessed property rights. See *State v. Batten*, 20 Wash. App. 77, 79-80, 578 P.2d 896, 897 (Wash. Ct. App. 1978) (cited in *Brechon*, 352 N.W.2d at 750).

Other states' courts, in dealing with the issue of claim of right, have been astutely cautious to not expand legal defenses to trespass beyond the concept of property rights from which such statutes arise. These courts have remained steadfast in their proper application of the law, even when met by defendants with strongly held beliefs about remaining on the property of another where those beliefs are not property-related.

#### CURRENT MISCONCEPTIONS

Unfortunately, there is a common misunderstanding as to the meaning of claim of right among various judges and defendants, as well as within jury instructions, in Minnesota's district courts. The common misconception is that claim of right is satisfied so long as defendants truly believe they had a right to be on the property, regardless of the source of that belief. This misconception allows for defendants to make claims that they have a right to be on private property no matter how irrelevant, outrageous, or tenuous the claim. This misconception becomes problematic in that it ignores the proper scope of claim of right as being confined to property interests, which was so clearly set forth in the decisions of the Minnesota Supreme Court and other courts examining the same or similar concepts.

That this broad definition of claim of right is incorrect is borne out by common sense as well. An individual who earnestly thought he or she had a property right to be at a certain location, such as permission, leasehold, or claim of title, is not a person for whom a trespass statute would be intended. This indi-

**Changing Firms? Making Partner?  
New Specialties? New Offices?**



**You Deserve a Headline!**

Whatever your news is, spread the word with an ad in *The Hennepin Lawyer*. Professional announcements are value priced at only \$250 for a 4.5" by 5" ad.

For more information on professional announcements, display advertising, or classified and Web site ads, contact Colleen Hillesheim at 612-752-6615 or [thl@hcba.org](mailto:thl@hcba.org).

vidual who is mistaken as to property interests should not be prosecuted under a statute intended to protect property interests and the intentional infringement thereon.<sup>5</sup>

Conversely, an individual who is not mistaken as to a property right, but rather has decided that he or she will stand on the property of another and not leave at the other's request based on a reason completely unrelated to property interests (e.g. refusing to leave the property of a corporation that the person believes violates child labor laws), is not in the same position.<sup>6</sup> The latter person intends to remain on the property knowing he or she has no property right to be on the private property, whereas the former person is simply mistaken as to the property right. Therefore, common sense clearly shows that the latter person should be found to have the necessary gravamen or intent for the crime of trespass, a crime rooted in property rights. An individual such as the described protestor attempting to avoid prosecution for trespass on the basis of claim of right, though unrelated to property interests, is in the same circumstance as described by the Court of Appeals for the District of Columbia regarding a protestor trespass case of its own:

Actually the case is a simple one. A group of apparently intelligent people deliberately violated the law, defied legal authority and invited arrest.... They seek to avoid their convictions by a series of technical arguments, none of which have substantive merit.

Whittlesey v. U.S., 221 A.2d 86, 92 (D.C. App. 1966) (quoted in State v. Quinnell, 271 Minn. 63, 68, 151 N.W.2d 598, 603 (1967)).

Moreover, there are significant practical consequences in allowing the sincerity of one's belief, whatever its nature, to substitute for a mistaken belief as to property rights. The consequence is that

the right of exclusion from one's private property is eroded, as the right no longer applies to any person who strongly believes he or she has a right to remain on the private property of another.

Recall the example of the orniphile neighbor on your porch described


***[T]here is a common misunderstanding as to the meaning of claim of right among various judges and defendants and in jury instructions in Minnesota's district courts.***

previously. The example typifies the issue that arises in allowing non-property-related justifications to constitute a claim of right. Unless courts properly delineate the boundaries of claim of right, your neighbor can continue to reside on your porch without criminal consequence, despite your ownership of the porch and despite your demands that she leave.

The circumstances wherein similar claims could be made are endless (any time one individual believes another has done something wrong). If non-property-related justifications excused criminal consequences in every one of these instances, the right of exclusion inherent in property rights would be crippled and the enforceability of the trespass statute rendered impossible. Courts should be aware of the consequences of failing to restrict claim of right to mistaken beliefs regarding property rights.

This article is an examination of the bounds of the claim of right concept and not a comment on those who engage in trespass nor the merit of their purpose. As the Gaetano court succinctly stated "genuineness of the belief or the popularity of the purpose" are irrelevant to claim of right. Gaetano, 406 A.2d at 1294. Perhaps your neighbor's assertion about your purported violation of the bird treaty is correct, but the merit of her belief neither shields her from the criminal consequences of her trespass nor strips you of rights that come with property ownership.

## CONCLUSION

The claim of right provision in the Minnesota Trespass Statute is finite in its application. Claim of right is a legal excuse or defense available to persons who had a good-faith belief, though mistaken, that they had a property right to enter the property of another. As the Minnesota Supreme Court has indicated, however, and as other courts have more ardently stated, the defense of claim of right does not excuse those who know they are on the property of another but strongly believe in their reason for being there. 

<sup>1</sup> This article examines claim of right as provided in Minn. Stat. § 609.605, subd. 1(b)(3) as it is the most commonly charged of the trespass provisions. It should be noted, however, that the statute provides for a number of other instances that qualify as trespass, some of which also contain claim of right language.

<sup>2</sup> In 1955, the legislature established the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections to, in part, revise Minnesota's criminal code. Proposed Minnesota Criminal Code, Intro. Statement of Advisory Committee (West 1962).

<sup>3</sup> The Brechon Court quoted language from decisions of other states' courts, which also contained language framing claim of right within property concepts: "An act which, as related to the true owner of the land, might appear to be trespass is not in fact a trespass if the act is committed in good faith by one who actually and sincerely believes that he is authorized (either because authorized by the true owner or because he believes himself to be the true owner) to do the act in question." Brechon, 352 N.W.2d at 749 (quoting Hayes v. State, 13 Ga. App. 647, 649, 79 S.E. 761, 762-63 (1913)).

<sup>4</sup> The Hoyt Court was unwilling to limit claim of right solely to a claim of ownership. 304 N.W.2d at 889. However, the Hoyt Court only expanded the claim of right concept so far as to include a mistaken belief about having consent or license from the title holder. (Cited in Brechon, 352 N.W.2d at 748.) In fact, in expanding upon the reason for inclusion of claim of right as negating the intent of the offense, the Hoyt Court quotes American Jurisprudence which quote reads, in part, that the legislature cannot be presumed to have intended to punish a person who committed the act "in the bona fide belief that the land is the property of the trespasser." (emphasis added) *Id.* at 891 (quoting 75 Am. Jur. 2d Trespass § 87 (1974)).

<sup>5</sup> Such an innocent individual is described by the Gaetano court, in part, as an individual who "had no reason to know that he was trespassing on the right of others." 406 A.2d at 1294.

<sup>6</sup> Such individuals don't possess the "bona fide belief" requisite for claim of right, but rather are attempting to "acquire immunity from prosecution for trespass by closing one's eyes to reality and stubbornly asserting an 'honest belief' to remain where one is not privileged to be." People v. Tuchinsky, 419 N.Y.S.2d 843, 844 (N.Y. Dist. Ct. 1979).