



HIGH COURT OF AUSTRALIA

27 November 2013

LI v CHIEF OF ARMY

[2013] HCA 49

Today the High Court unanimously allowed an appeal against a decision of the Full Court of the Federal Court of Australia and quashed a conviction for the service offence of creating a disturbance on service land. The High Court held that "creating a disturbance" involves the intentional doing of an act which results in a non-trivial interruption of order, the person charged being reckless as to the occurrence of that result.

Major Ting Li, a member of the Australian Defence Force, was involved in an incident in the Campbell Park Offices in the Australian Capital Territory. Responding to statements made by Andrew Snashall, a Commonwealth public servant, which he found offensive and suspected to have been racially motivated, Major Li became involved in an altercation with Mr Snashall that was witnessed by others working in the Campbell Park Offices. He refused to leave Mr Snashall's office when Mr Snashall asked him to do so, followed Mr Snashall out of the office while speaking in a raised voice, forcefully pushed against the office door when Mr Snashall returned and attempted to close it, and stood close to Mr Snashall's face speaking in an agitated and aggressive manner.

Major Li was charged before a restricted court martial with the service offence of having created a disturbance on service land. The judge advocate directed the court martial that the prosecution did not need to prove that Major Li intended to create a disturbance, but needed to prove only that Major Li intended to engage in the acts that amounted to a disturbance. Major Li was convicted and sentenced to be severely reprimanded and fined.

The Defence Force Discipline Appeal Tribunal dismissed an appeal by Major Li, who then commenced an appeal on a question of law in the Federal Court. A majority of a Full Court of the Federal Court found no error in the judge advocate's direction to the court martial. Major Li appealed to the High Court by special leave.

The High Court held that "creating a disturbance" is the doing of an act which results in a disturbance. It must be proved that the person charged intended to do the act. But it must also be proved that the act resulted in a disturbance and that the person charged either believed that the act would result in a disturbance or was aware of a substantial risk that the act would result in a disturbance and, having regard to the circumstances known to him or her, it was unjustifiable to take that risk. The High Court also held that a "disturbance" is a non-trivial interruption of order and that violence or a threat of violence is not necessary to the existence of a disturbance. The High Court quashed Major Li's conviction and remitted the case to the Defence Force Discipline Appeal Tribunal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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