

MSC Opinion: A defendant's conduct alone can create or enhance a victim's vulnerability for the purpose of scoring Offense Variable 10 under the sentencing guidelines.

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On July 26, 2011 the Supreme Court released its opinion in *People v Huston*, No. 141312. Justice Markman authored the majority opinion, holding that the trial court properly assessed 15 points under OV 10, which is appropriate when a defendant has “engaged in predatory conduct to exploit a vulnerable victim.” Predatory conduct is defined by statute to mean “preoffense conduct directed at a victim.” In this case the defendant was armed, concealed and lying in wait at night in an empty parking lot. The majority reasoned that the defendant’s preoffense conduct does not need to be aimed toward a specific victim in order to be predatory, and a victim can be made vulnerable by the very nature of the defendant’s conduct alone. Justice Hathaway authored an opinion concurring in part and dissenting in part. Justice Hathaway agreed that a victim’s vulnerability should not be limited to inherent or personal characteristics, but dissented on the ground that 15 points should be assessed only when preoffense conduct was directed at one or more specific victims. Justice Cavanagh also authored a dissent. Justice Cavanagh would require a victim’s vulnerability to be based on the victim’s personal characteristics, and would require that the preoffense conduct be directed at a specific victim.