

# Supreme Court of Florida

STATE OF FLORIDA,  
Petitioner,

vs.

JEFFREY ALLEN HUNTER,  
Respondent.

No. 88,076

[March 13, 1997]

WELLS, J.

We have for review Hunter v. State, 21 Fla. L. Weekly D900 (Fla. 2d DCA April 12, 1996), which addresses the same issue which we recently resolved in Gaber v. State, 684 So. 2d 189 (Fla. 1996). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

In Hunter, the defendant was convicted at trial of, among other charges, two counts of armed burglary, section 810.02(2)(b), Florida Statutes (1993), and one count of grand theft of a firearm, section 812.014(2)(c), Florida Statutes (1993), for events arising from the same criminal episode. On appeal to the Second District, the court relied on Marrow v. State, 656 So. 2d 579 (Fla. 1st DCA), review denied, 664 So. 2d 249 (Fla. 1995), and found that double jeopardy precluded the conviction for both charges where the act of stealing a firearm converted the burglary into an armed burglary. Hunter, 21 Fla. L. Weekly at D900. Consequently, the court vacated the conviction for grand theft of a firearm.

In Gaber, we confronted the same issue as Hunter but resolved the issue to the contrary. There, we disapproved Marrow and held that

double jeopardy does not preclude separate convictions because grand theft and armed burglary have separate statutory elements. Gaber. In accordance with our decision in Gaber, we quash the district court's decision in this case and remand with directions that the defendant's conviction for grand theft of a firearm be affirmed.<sup>1</sup>

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW,  
GRIMES, HARDING and ANSTEAD, JJ.,  
concur.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

Application for Review of the Decision of the  
District Court of Appeal - Direct Conflict of  
Decisions

Second District - Case No. 94-04426

(Polk County)

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<sup>1</sup>Since the other issues addressed by the district court are not before us, we do not address them. Further, we decline to address the other issues raised by the respondent.

Robert A. Butterworth, Attorney General;  
Robert J. Krauss, Senior Assistant Attorney  
General, Chief of Criminal Law, and Stephen  
D. Ake, Assistant Attorney General, Tampa,  
Florida,

for Petitioner

James Marion Moorman, Public Defender and  
John C. Fisher, Assistant Public Defender,  
Tenth Judicial Circuit, Bartow, Florida,

for Respondent