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y another assignment of error, defendant contends that the trial court erred in instructing the jury on the theory of felony murder to the extent that it allowed the jury to rely on the felony of first-degree

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arson as the predicate felony supporting that theory. Defendant contends that first-degree arson could not be used in this case as the predicate felony for the felony-murder theory because the evidence at trial was insufficient to support his conviction for first-degree arson. Specifically, he contends that there was no evidence that the burned dwelling was "occupied" for purposes of N.C.G.S. § 14-58 or that the killing and the burning were part of the same criminal incident. Defendant says that the evidence would only support a finding that the time interval between the death of the victim and the burning of the mobile home was too remote, and the relationship between the two events too attenuated, for them to be part of one continuous transaction. We disagree.

When measuring the sufficiency of the evidence to support submission of a charged offense to the jury, the evidence must be considered in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn from the evidence. *State v. Quick*, 329 N.C. at 31, 405 S.E.2d at 197. The test of the sufficiency of the evidence to withstand defendant's motion to dismiss "is the same whether the evidence is direct, circumstantial, or both." *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991).

Our arson statute provides in pertinent part: "There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree. . . ." N.C.G.S. § 14-58 (1993). "[F]or purposes of the arson statute, a dwelling is 'occupied' if the interval between the mortal blow and the arson is short, and the murder and arson constitute parts of a continuous transaction." *State v. Campbell*, 332 N.C. 116, 122, 418 S.E.2d 476, 479 (1992). In the present case, the evidence tended to show that the victim was dead at the time the mobile home was burned. Smith estimated that he and defendant parked their car at approximately 11:00 p.m. After murdering and robbing the victim, they drove both of his vehicles to Rutherford County and then returned for the car in which they had originally arrived. At that time, defendant burned the mobile home to destroy the evidence. Smith testified that this occurred between 2:00 and 2:30 a.m.

Construing the evidence in the light most favorable to the State, defendant carried out his plan to murder and rob the victim and then burned the evidence of those crimes as parts of one continuous transaction. The fact that the time interval between the murder and the arson was as much as three and one-half hours did not prevent a finding

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based on all the surrounding circumstances that the interval was "short" enough for the arson and the murder to be parts of one continuous transaction. In this case, given the extent to which defendant went to hide the stolen property and the complexity of defendant's criminal scheme, the murder and arson were "so joined by time and circumstances as to be part of one continuous transaction," *id.*, and therefore support a finding that the dwelling was "occupied" within the meaning of N.C.G.S. § 14-58. Therefore, the evidence was sufficient to support defendant's conviction for first-degree arson. Accordingly, the trial court did not err in submitting the first-degree murder charge to the jury on the theory of felony murder, predicated on the felony of first-degree arson. This assignment is without merit and

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**Arson and Other Burnings § 32 (NCI4th); Homicide § 278 (NCI4th) -
interval between killing and burning - occupancy of dwelling -
first-degree arson - felony murder**

The evidence was sufficient to show that the killing of the victim and the burning of his dwelling were so joined by time and

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circumstances as to be part of one continuous transaction and therefore supports a finding that the dwelling was "occupied" within the meaning of N.C.G.S. § 14-58, and the evidence was thus sufficient to support defendant's conviction of first-degree arson and the trial court's submission of felony murder to the jury predicated on the felony of first-degree arson, where it tended to show that defendant and his accomplice parked their car near the victim's mobile home at approximately 11:00 p.m.; after murdering and robbing the victim, they drove both of his vehicles to another county and then returned for the car in which they had originally arrived; and at that time, which was between 2:00 and 2:30 a.m., defendant burned the mobile home to destroy the evidence. The fact that the time interval between the murder and the arson was as much as three and one-half hours did not prevent a finding based on all the surrounding circumstances that the interval was "short" enough for the murder and the arson to be parts of one continuous transaction.

Am Jur 2d, Arson §