

COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED March 10, 2026 10:14 AM ▲ COURT USE ONLY ▲
El Paso County District Court Honorable Jill M. Brady, Judge Case No. 23CR5603	
Plaintiff-Appellee, THE PEOPLE OF THE STATE OF COLORADO, v. Defendant-Appellant, BRANDON ARSENIO BURNS.	Case No. 24CA2231
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PEOPLE’S ANSWER BRIEF	

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☒ In response to each issue raised, the appellee has provided, under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Radhika M. Kattula
RADHIKA M. KATTULA

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INTRODUCTION

A jury found the defendant, Brandon A. Burns, guilty of unlawfully possessing methamphetamine while armed, possessing cocaine with the intent to manufacture or distribute and while armed, and driving while his ability was impaired (DWAI). It acquitted him of felony menacing. The trial court sentenced him to 16 years in the custody of the Department of Corrections, plus mandatory parole.

On appeal, the defendant challenges the warrantless search of his car by the sheriff's deputies. Specifically, he contends that (1) the vehicle search-incident-to-arrest exception from *Arizona v. Gant* did not apply, (2) the automobile exception did not apply, (3) the search of closed containers in the car exceeded constitutional limits, and (4) all evidence obtained after the illegal search should have been suppressed as the fruit of an unlawful search.

Based on the record and applicable law, however, the judgment of conviction should be affirmed.

STATEMENT OF THE CASE AND FACTS

I. Initial Charges

The defendant was charged with one count of being a special offender, two counts of possession with intent to distribute a controlled substance, four counts of felony menacing, one count of possession of a weapon by a previous offender (POWPO), one count of third-degree assault, one count of driving under the influence, and three habitual counts. (CF, pp.115-119). The charges were based on the defendant allegedly participating in a fight at a club, pointing a gun at several people during the fight, and having a gun, cocaine, fentanyl, marijuana, and items related to the sale of drugs in his vehicle when he was located and arrested by the police. (CF, pp.2-4 (affidavit of probable cause)).

II. Motion to Suppress

Before trial, the defendant moved to suppress the physical evidence found in his car, claiming that the lack of a warrant made the search unreasonable and unconstitutional. (CF, pp.34-36). The prosecution responded that the deputies had reasonable suspicion to conduct a vehicle search-incident-to-arrest based on the matching

descriptions of the suspect and car, the defendant's erratic driving, and the proximity of the stop to the club. (CF, pp.71-85). Moreover, they argued that based on existing case law, the search did not need to end once a gun had been found. (CF, p.82).

At the motions hearing, the parties stipulated to the admission of the deputies' body-worn camera footage (TR-8/19/24, pp.4-5), and the prosecution presented evidence of the following.

A. Incident & Vehicle Search

Early one morning in December 2023, several El Paso County deputies responded to a reported fight involving a gun outside of a night club. (CF, pp.2-4; TR-8/19/24, p.7:3-25). Witnesses reported seeing a man with dreadlocks, a black ballcap, a black and white checkered jacket, and white jeans aim a gun with a green laser pointer at them. (CF, p.2; TR-8/19/24, pp.9-10, 25:3-10). They also told 911 that the man left the club in a silver sedan with the trunk popped open and no front license plate. (CF, p.3; TR-8/19/24, pp.8-9, 32:4-10).

While on his way to the club, one of the responding deputies saw a sedan matching that description speeding from the direction of the club.

(TR-8/19/24, p.9:1-17). The officer turned around and followed it to a nearby gas station. (TR-8/19/24, p.11:3-20). He observed the sedan run a red light. (TR-8/19/24, p.11:6-11).

At the gas station, the deputy positioned his vehicle behind the sedan, got out of his patrol car, and unholstered his duty weapon. (TR-8/19/24, p.11:18-22). The driver also exited his car. (TR-8/19/24, p.11:22-25). As the driver did so, the deputy confirmed that his clothing matched what the witnesses had reported. (TR-8/19/24, p.12:8-18). The driver was eventually identified as the defendant. (TR-8/19/24, p.15:8-9).

Once backup arrived, the deputy handcuffed the defendant and patted him down, finding an Altoids can in one of his jacket pockets. (TR-8/19/24, pp.20-21, 27:5-15). Confirming the defendant had no weapons on him, the deputy moved him to the back of a patrol car. (TR-8/19/24, p.21:1-4).

The deputy then searched the sedan. (TR-8/19/24, p.21:5-6). He immediately found a black handgun with a green laser underneath the

driver's seat. (TR-8/19/24, p.25:1-10). The gun matched the description given by witnesses at the club. (TR-8/19/24, p.25:1-10).

At the same time, another deputy read the defendant his *Miranda* rights and began asking him questions after he agreed to speak. (TR-8/19/24, pp.19-20; Supp.Env, Deputy Krzywonski's BWC 0:00-0:40). The defendant admitted to having been at the club that night but denied getting into a fight there. (Supp.Env, Deputy Krzywonski's BWC 1:17-2:10). He also admitted to smoking marijuana earlier and drinking alcohol at the club before driving. (Supp.Env, Deputy Krzywonski's BWC 2:10-3:09).

Once the gun had been found and secured, the officers discussed whether they had probable cause to continue searching the rest of the car. (Supp.Env, Deputy Fleckenstein's BWC 11:40-16:51). Concluding that they still had probable cause to search for more weapons, they proceeded. (TR-8/19/24, p.25:11-16; Supp.Env, Deputy Fleckenstein's BWC 16:26-16:55).

As they began, the deputy revisited the Altoids tin found on the defendant's person and discovered four individually packaged bags of

what he believed to be cocaine inside. (CF, p.3; TR-8/19/24, p.27:5-15; Supp.Env, Deputy Fleckenstein's BWC 18:28-18:41). In the backseat of the car, they later found a backpack and a lunchbox containing more drug evidence, including cocaine, marijuana, various pills that field tested positive for fentanyl, scales, baggies, and more Altoids tins. (TR-8/19/24, p.25:14-24; Supp.Env, Deputy Fleckenstein's BWC 21:47-24:49).

B. Trial Court's Ruling

Based on the deputy's testimony and the body-worn camera footage, the prosecution reiterated that the deputies had reasonable suspicion to believe further evidence of menacing was in the car, including after the gun was found. (TR-8/19/24, pp.47-53). In response, the defendant emphasized that the deputies had no specific identification of him as the individual from the club, or any other indication that a gun or drugs would be found in the sedan before they searched it. (TR-8/19/24, pp.53-55).

The trial court agreed with the prosecution. (TR-8/19/24, pp.56-59). In doing so, it broke the search into two parts: "locating the gun,

and then the search that happens after that.” (TR-8/19/24, p.56:22-23).

For the first part of the search, the court concluded that the deputies

“absolutely had a reasonable basis to believe the vehicle contains

evidence of menacing,” or the crime of arrest. (TR-8/19/24, pp.56-57).

Therefore, “the gun would not be suppressed.” (TR-8/19/24, p.58:11-12).

As for the second part of the search, the court concluded that the deputies, in part, had “a reasonable basis to believe there could be other drugs in the car” based on the cocaine they found. (TR-8/19/24, p.58:18-20). The deputies also had “a reasonable basis” “to continue to search for other things that may still be relevant to the offense of arrest or the menacing like . . . identity evidence related to Mr. Burns, clothing, bullets,” or even another gun. (TR-8/19/24, p.59:7-14). Thus, the court denied the defendant’s motion to suppress. (TR-8/19/24, p.59:23-25).

III. Jury Trial

At trial, the prosecution introduced, among other things, the drugs and gun from the car. (EX, pp.16-27, 30-42). Later in the trial, it also dismissed the third-degree assault count and three of the four menacing counts prior to jury deliberations. (TR-9/11/24, pp.169-170).

The jury returned a guilty verdict for the two drug offenses, DWAI, and special offender count, but acquitted the defendant of felony menacing. (CF, pp.200-206; TR-9/12/24, pp.122-125). The prosecution subsequently dismissed the POWPO and habitual counts as well. (TR-9/12/24, pp.90-91, 125-127).

This appeal followed.

SUMMARY OF THE ARGUMENT

The trial court properly rejected the defendant's request to suppress the physical evidence found during a search of his car because the vehicle search-incident-to-arrest doctrine applied. First, the deputies reasonably suspected that the defendant's car might have contained a weapon based on the eyewitness' descriptions of the suspect's clothing and car. Second, once the deputies found a gun, they were permitted to continue searching for additional menacing evidence under the vehicle search-incident-to-arrest doctrine.

Even if the search-incident-to-arrest analysis did not support the entire search, the trial court still did not err in denying the defendant's suppression request because the automobile exception applied too.

Based on the alleged menacing, the deputies had probable cause to believe that guns could be found in the car based on the matching descriptions and witness testimony they had received. And the deputies also had probable cause to search for drugs because they had seized multiple baggies of suspected cocaine during a valid search-incident-to-arrest of the defendant's person.

Next, in conducting the search, the deputies did not violate the defendant's constitutional rights by searching closed containers in the car. They opened a backpack, lunchbox, and other personal effects on the reasonable belief that these items could contain guns or drugs.

For these reasons, the evidence seized were not fruits of an unlawful search. And, in any event, assuming as true the defendant's argument that the continued search of his car was unlawful after a gun was found, the gun and cocaine discovered before then were still admissible, and the convictions based on that evidence should be upheld.

ARGUMENT

I. The trial court properly denied the defendant's motion to suppress evidence.

The defendant contends the trial court should have suppressed all evidence derived from the deputies' warrantless search of his car. Not so.

A. Standard of Review

The People agree that this issue has been preserved.

The People also agree with the defendant's framing of the standard of review. "A district court's ruling on a motion to suppress evidence presents a mixed question of law and fact." *People v. Kessler*, 2018 COA 60, ¶ 16. A reviewing court "defer[s] to the court's findings of fact so long as they are supported by competent evidence in the record, but [it] review[s] the court's legal conclusions de novo." *Id.*

However, the appellate court's review is not limited to the factual findings on which the trial court based its order. *See People v. Clark*, 2020 CO 36, ¶ 22. Rather the court "may also consider any undisputed facts in the record." *Id.* The denial of a motion to suppress may be

affirmed on any ground supported by the record. *See Moody v. People*, 159 P.3d 611, 615 (Colo. 2007).

The People also add that any error is subject to the constitutional harmless error standard of reversal and does not require reversal if harmless beyond a reasonable doubt. *See People v. Rodriguez-Ortiz*, 2025 COA 61, ¶ 20; *Hagos v. People*, 2012 CO 63, ¶ 11.

B. Law and Analysis

The defendant contends that the search violated the (1) vehicle search-incident-to-arrest doctrine, (2) automobile exception, and (3) closed container rule, and therefore, (4) the exclusionary rule requires the suppression of all evidence derived from the unconstitutional search. Upon closer examination of each of those doctrines, the defendant's arguments must fail.

1. The deputies' search of the car was justified under the vehicle search-incident-to-arrest doctrine.

The defendant first contends the trial court should have suppressed the evidence from his car because the deputies lacked

reasonable suspicion to conduct a vehicle search-incident-to-arrest, especially once they seized the gun. The case law indicates otherwise.

In *Arizona v. Gant*, 556 U.S. 332 (2009), “the United States Supreme Court considered the contours of the search-incident-to-arrest doctrine as applied to vehicles and instructed that a warrantless search of the passenger compartment of a vehicle could be justified only under two rationales.” *People v. Crum*, 2013 CO 66, ¶ 12. “First, the Court held that a search could be conducted if the occupant was unrestrained and could reach a weapon or destructible evidence in the passenger compartment.” *Id.* “Second, the Court held that circumstances unique to the vehicle context could justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” *Id.* (quoting *Gant*, 556 U.S. at 343).

Because the defendant here was handcuffed and secured in the back of a patrol car before the deputies began searching his car, “[t]his case concerns only the application of the latter evidence-gathering rationale.” *Id.* And under this rationale, “officers may search the passenger compartment of a vehicle where the particular circumstances

give rise to a reasonable articulable suspicion that the vehicle might contain evidence of the crime for which they had probable cause to arrest.” *Id.* at ¶ 2.

Here, the deputies had, at minimum, reasonable suspicion that the vehicle would contain evidence of the felony menacing for which they arrested the defendant because of the following facts:

- A suspect wearing a black hat, white jeans, and a checkered jacket had been seen earlier in the evening brandishing a gun with a green laser out of his car. (TR-8/19/24, pp.9-10, 25:3-10). The defendant, when found, matched this description exactly. (TR-8/19/24, p.12:8-18).
- In addition to his clothing, the defendant’s car also matched the description given by witnesses: a silver sedan with an open trunk and a missing front license plate. (TR-8/19/24, pp.8-9, 32:4-10).
- The defendant’s car came speeding from the direction of the night club only minutes after the 911 call. (TR-8/19/24, p.9:1-17).

- The defendant had been driving erratically before stopping at the gas station. (TR-8/19/24, p.11:6-11). He appeared intoxicated to the deputy who gave him his *Miranda* warnings, and when questioned further, he admitted to drinking at the club before driving. (Supp.Env, Deputy Krzywonski’s BWC 2:10-3:09)

Based on these facts, the deputies had more than ample grounds to reasonably suspect that the sedan would contain evidence of the felony menacing. And they immediately found some evidence—in the form of a gun with a green laser pointer attached to it—under the driver’s seat. (TR-8/19/24, p.25:1-10).

Moreover, as the trial court noted, the deputies had a “reasonable basis” to believe that further evidence related to the offense of arrest might be found in the car after the discovery of that gun. (TR-8/19/24, p.59:13-16). For example, in a driving under the influence case, a division of this Court held that the officers’ reasonable suspicion that a car contained evidence of the crime “did not” “evaporate once the officers found some alcohol.” *Kessler*, ¶ 28. To the contrary, the division

observed that “*Gant* expressly permits searches for evidence relevant to the crime of arrest and does not require police to stop that search once *some* evidence is found.” *Id.* at ¶ 30 (quoting *State v. Smiter*, 793 N.W.2d 920, 923 (Wis. 2010)).

Similarly, here, the deputies here did not need to end their search of the passenger compartment once they found a gun. They could continue to search for further evidence that could support the felony menacing, including any additional guns in case the one they had discovered was not the one that was used during the menacing. That they discovered drugs unrelated to the alleged menacing in the process does not otherwise erode the lawfulness of the continued search. After, all, “police officers are not required to close their eyes to any evidence that they plainly see while conducting otherwise legitimate searches.” *People v. Pappan*, 2018 CO 71, ¶ 11

For these reasons, the deputies acted lawfully under the vehicle search-incident-to-arrest doctrine.

2. The automobile exception also justified the search of the car.

The defendant next contends that any probable cause the deputies had to search his car under the automobile exception was exhausted once the gun was found. Again, the case law and record show otherwise.

“[T]he automobile exception permits the warrantless search of an automobile if there is probable cause to believe that the automobile contains evidence of a crime.” *People v. Furness*, 2025 CO 16, ¶ 17 (internal quotation and citation omitted). Further, “[t]he automobile exception does not have a separate exigency requirement: If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.” *Id.* (citation modified).

“A police officer has probable cause to conduct a search when the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present.” *People v. Bailey*, 2018 CO 84, ¶ 20. “In evaluating this practical and common-

sensical standard, courts have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of consistently looking to the totality of the circumstances.” *Furness*, ¶ 21 (citation modified). And if probable cause exists, “it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search.” *Id.* at ¶ 19 (alteration in original) (internal quotation and citation omitted). For two reasons, these principles apply here.

First, the deputies had not only reasonable suspicion but also probable cause to search the defendant’s vehicle for guns. “The record shows that the vehicle[] and the appellant substantially matched the descriptions received by” the arresting officer. *People v. Saars*, 584 P.2d 622, 626 (Colo. 1978). Such matching evidence is “sufficient to warrant a reasonably cautious and prudent police officer to believe, in light of his training and experience, that an offense had been committed and that the appellant probably had committed it.” *Id.* Further, the matching descriptions combined with the witnesses’ observations that the gun with a green laser came from the sedan the suspect later fled in gave the deputies “probable cause to believe that a weapon might be

found in the vehicle” itself. *People v. Lee*, 914 P.2d 441, 446 (Colo. App. 1995). And for the reasons discussed above, that probable cause did not dissipate after the discovery of one gun. *See Kessler*, ¶ 28.

Second, the deputies also had developed probable cause to search the vehicle for drugs by the time they continued searching after the discovery of a gun.¹ During a valid search-incident-to-arrest of the defendant’s person, one of the deputies seized an Altoids tin storing individual baggies containing roughly equal weights of suspected cocaine. (CF, p.3; TR-8/19/24, p.27:5-15; Supp.Env, Deputy Fleckenstein’s BWC 18:28-18:41); *see also People v. Rios*, 43 P.3d 726, 730 (Colo. App. 2001) (“The search of the tin [on the defendant’s person] did not exceed the permissible scope of a search incident to a custodial arrest.”). This discovery combined with the defendant’s erratic driving, lying about the contents of the tin, and admission that he was impaired during his Mirandized interview indicated “that a fair probability

¹ In the trial court, the defendant indicated he was not challenging the search of his person or seeking suppression of the drugs found on his person. (TR-8/19/24, p.27:5-21).

existed that a search of the vehicle would reveal contraband or evidence of a crime” like “illegal drugs.” *People v. Zuniga*, 2016 CO 52, ¶¶ 30-31.

Therefore, the automobile exception also justified the continued warrantless search for both further evidence of felony menacing and drugs.

3. The search of the closed containers in the defendant’s car fell within constitutional limits.

The defendant separately argues that the deputies were not allowed to search small containers in the car like the backpack, lunchbox, and his wallet. Untrue.

“Under the automobile exception, as long as the police have legitimately stopped an automobile and have probable cause to search it, they may also search containers within the automobile that might contain the object of their search.” *People v. Moore*, 900 P.2d 66, 70 (Colo. 1995). “Separate determination of probable cause for each

closed container found within a vehicle” is unnecessary.² *People v. McMillon*, 892 P.2d 879, 883 (Colo. 1995). “And to the extent the automobile exception permits the search of a container while it is located within an automobile, . . . [it] permits a search of the container without a warrant, even after the container has been removed from the automobile,” as the automobile exception has no separate exigency requirement. *People v. Ball*, 2017 CO 108, ¶ 17.

The police can also search closed containers if the vehicle search-incident-to-arrest doctrine applies. *See McMillon*, 892 P.2d at 883. (“[W]hen a policeman has made a lawful custodial arrest of the

² The defendant appears to cite *People v. Minor*, 222 P.3d 952 (Colo. 2010) for the proposition that a warrantless search of a backpack within a vehicle can be invalidated if there is no container-specific probable cause. OB, pp.18, 19. However, in explaining the lower court’s error, our supreme court in that case (1) noted that “probable cause in the context of warrantless vehicle searches . . . is a different analysis than the consensual search upon which [they] decide the case” upon, *Minor*, 222 P.3d at 955 n.1, and (2) found “it unnecessary to add any superstructure to our Fourth Amendment analysis that would require specific consent to search individual containers when no forcible destruction of property is necessary to access their contents,” *id.* at 957. Because neither consent nor forcible property destruction is at issue here, that case is inapposite, and the People do not discuss it further.

occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile’ and may also ‘examine the contents of any containers found within the passenger compartment,’ and such ‘container’ may be searched whether it is open or closed. (quoting *New York v. Belton*, 453 U.S. 454, 460 (1981))).

As explained above, the deputies had reasonable suspicion to conduct a vehicle search-incident-to-arrest, as well as probable cause to look for both firearm and drug evidence under the automobile exception. Because firearms and “[d]rug evidence can readily be concealed in small containers” like a backpack or a lunchbox, the search of these containers was permissible. *Moore*, 900 P.2d at 71; *see also People v. Edwards*, 836 P.2d 468, 472 (Colo. 1992) (concluding that an officer “had probable cause to search any part of vehicle, which might contain the gun involved in the alleged burglary, including the trunk.”).

**4. Thus, the evidence was not
derived from an unlawful search.**

Lastly, the defendant contends that the exclusionary rule mandates suppression of “the handgun, narcotics, paraphernalia, and Mr. Burns’s statements.” OB, p.22. His premises are unsound.

“The exclusionary rule ‘is a judicially created remedy designed primarily to deter unlawful police conduct.’” *People v. Archuleta*, 2017 COA 9, ¶ 23 (quoting *People v. Schoondermark*, 759 P.2d 715, 718 (Colo. 1988)). “Under the rule, evidence that has been obtained in violation of the Fourth Amendment may not be presented in the government’s case-in-chief.” *Id.* “The exclusionary rule applies both to the illegally obtained evidence itself and to the ‘fruit of the poisonous tree’—any other evidence derived from the primary evidence.” *Schoondermark*, 759 P.2d at 718.

Even when a Fourth Amendment violation is found, however, “the exclusionary rule should not automatically apply.” *Casillas v. People*, 2018 CO 78M, ¶ 21. “Because the exclusionary rule is intended to deter improper police conduct,” it “should not be applied in cases

where the deterrence purpose is not served, or where the benefits associated with the rule are minimal in comparison to the costs associated with the exclusion of probative evidence.” *Id.* (citation modified).

To begin, the defendant appears to challenge in passing the admission of certain “statements” in his discussion of the exclusionary rule. OB, p.22. It is unclear which statements the defendant is challenging on appeal because they are otherwise not mentioned in the opening brief, and the trial court already suppressed certain statements made by the defendant before he was read his *Miranda* rights. (TR-8/19/24, pp.46-47). So, this Court should not address that argument. *See Archuleta*, ¶ 24 (“[A] defendant bears the burden of demonstrating a factual nexus between the illegality and the challenged evidence.” (citation modified)); *People v. Lientz*, 2012 COA 118, ¶ 30 (“[P]arties must do more than make conclusory assertions; they must present reasoned analysis.”).

In any event, to the extent that he is challenging the admission of statements he made while secured in the patrol car, those statements—

which were unrelated to what was discovered in the vehicle search—were made voluntarily after the defendant was lawfully arrested, read his *Miranda* rights, and waived them, (TR-9/11/12, pp.116-117; Supp.Env, Deputy Krzywonski’s BWC 0:00-4:40). And defense counsel below clarified several times that he did not take issue with any of the post-*Miranda* statements, (TR-8/19/24, pp.6:9-13, 39:13-15). *See, e.g., Phillips v. People*, 2019 CO 72, ¶ 22 n.4 (noting in the suppression context that “[i]f there is evidence in the record that defense counsel made a conscious decision to forego raising a claim for strategic or other reasons, we will not hesitate to find an implied waiver”).

Further, even if the defendant is right that the *continued* search of the defendant’s car was unconstitutional after a gun was found, the evidence discovered before then was still admissible. As explained earlier, the gun was discovered during the initial search of the front of the car. (TR-8/19/24, p.25:1-10). The cocaine was discovered during a valid search-incident-to-arrest of the defendant’s person. (TR-8/19/24, p.27:5-15; Supp.Env, Deputy Fleckenstein’s BWC 4:28-4:41, 18:28-18:41). Thus, even assuming the defendant’s contentions are true, his

special offender and possession of cocaine with the intent to manufacture or distribute convictions should still be upheld. And his 16-year sentence would be otherwise unaffected.

CONCLUSION

For the above reasons, the People respectfully request that this Court affirm the defendant's judgment of conviction

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE’S ANSWER BRIEF** upon **ALYSSA R. AKRE** and **WILLIAM H. SKEES** and all parties herein, via Colorado Courts E-filing System on March 10, 2026.

/s/ Radhika M. Kattula
RADHIKA M. KATTULA