

Drug Facilitated Sexual Assault Prosecution (DFSA)



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INTRODUCTION



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VIDEO

<https://youtu.be/ze3qhvQgjD4?si=EmDPN0v8tGEhIW8r8>



Applicable DFSA Statutes

566.030 & 566.060



RSMo Section 566.030

A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.



RSMo Section 566.060:

A person commits the offense of sodomy in the first degree if he or she has deviate sexual intercourse with another person who is **incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion**. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.



Important Distinction between 566.030 & 566.060

- Deviate Sexual Intercourse: Under RsMo 566.010 (1)-any sexual act involving the genitals of one person and the mouth, hand, tongue, or anus of another person; or any act involving the penetration, however slight, of the penis, the female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim
- Sexual Intercourse: Under RsMo 566.010 (6)-any penetration, however slight, of the female genitalia by the penis



Applicable Elements Of 566.030 & 566.060 (Facts specific)

- incapable of consent due to intoxication**
- Forcible compulsion**



Important Case Law
Examples: 566.030 &
566.060



Important Case Law Examples: 566.030 & 566.060

(Court does not distinguish between alcohol and drug intoxication)

State v. Dickerson, 609 S.W.3d 839 (2020): Voluntary Intoxication, court found the victim was incapable of consent by reason of intoxication, that supported conviction under 566.060, victim drank large quantity of alcohol, victim was ill and vomited twice, victim passed out and was unconscious in defendant's bedroom, victim was dead weight, victim was just coming out of being passed out, & victim was still under the effects of intoxication when police arrived



Important Case Law Examples: 566.030 & 566.060

- State v. King, 626 S.W.3d 828 (Mo. Ct. App. 2021)**: Voluntary Intoxication, courts found that the evidence was sufficient to uphold the conviction under 566.030 and 566.060 by forcible compulsion.
- Missouri courts have not issued a case focused solely on drug administration as the form of forcible compulsion, but in this case, they state their analysis applies equally to alcohol or drugs.

*courts held that a victim's **voluntary intoxication** does not preclude a finding of forcible compulsion. The focus is on the victim's ability to give informed consent, not on how impairment occurred. Plainly: **Consent to alcohol/drugs does not equate consent to sexual assault.**



Continuation of State v. King

Definition of Incapacity: Incapacitation includes being unconscious, unable to appraise one's conduct, or unable to communicate willingness to act.

Force and Resistance: A victim's inability to resist due to unconsciousness does not benefit the defendant; it is a factor in determining whether the defendant overcame "reasonable resistance."

Totality of the Circumstances: The court considered the defendant's control or authority over the victim and whether the victim was under duress. Even quiet manipulation of an unconscious victim can demonstrate domination and compulsion. See also *Niederstadt v. Nixon*, 505 F.3d 832 (8th Cir. 2007) (recognizing that a sleeping victim cannot resist and later resistance cannot negate the completed act)

Prosecuting DFSA



What do we Need:

- Details, Details, & Details**

- Corroboration**

- Physical Evidence**



Evidence

Key Testimonial Evidence

- Victim- (**cannot prosecute anonymous cases**)
- Event Witnesses
- Pre/Post- **Event Witnesses (ones who can give details that corroborate Victim's intoxication)**
- Disclosure Witnesses
- Experts:
 - Toxicologist (**helpful to understand how substance affect the body and educate a jury**)
 - SANE Nurse
 - DNA- **didn't happen/consent-**
 - **Trauma Expert**

Key Non-Testimonial Evidence

- Pictures and videos (surveillance, recordings, etc.)
- Cell phone and social Media
- Receipts (can help establish timeline and corroborate locations)
- Medical Records
- Sexual Assault Kits
- DNA



Hurdles in Prosecuting DFSA



Hurdles in DFSA

-Challenging to prove because Victim's memory/defendant can shape narrative

-Societal Prejudice and Biases

- Law and Order
SVU Effect:
expectations vs. reality

- Understanding Consent: can be withdrawn at anytime and consent to intoxication doesn't equate consent to SA

-Lack of witnesses

-Victim's likeability

-Hearsay: Officer and Nurses in the same room during examination (medical diagnosis vs. truth of the matter)

HEARSAY

-Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted in that statement.

Examples: Witness A testifying to what Witness B told him is generally inadmissible as evidence, as Witness B needs to come in and testify instead of relying on Witness A saying what Witness B said.

- Generally, consider unreliable because not under oath, not subject to cross-examination, and may be fabricated or inaccurate
- Multiple exceptions to the hearsay rule that will allow the statement to come in during trial: **Excited Utterances, Statements for Medical diagnosis or treatment, admission against interest, present sense impression, etc.**

Jumping Over the Hurdles



Jumping Over the Hurdles

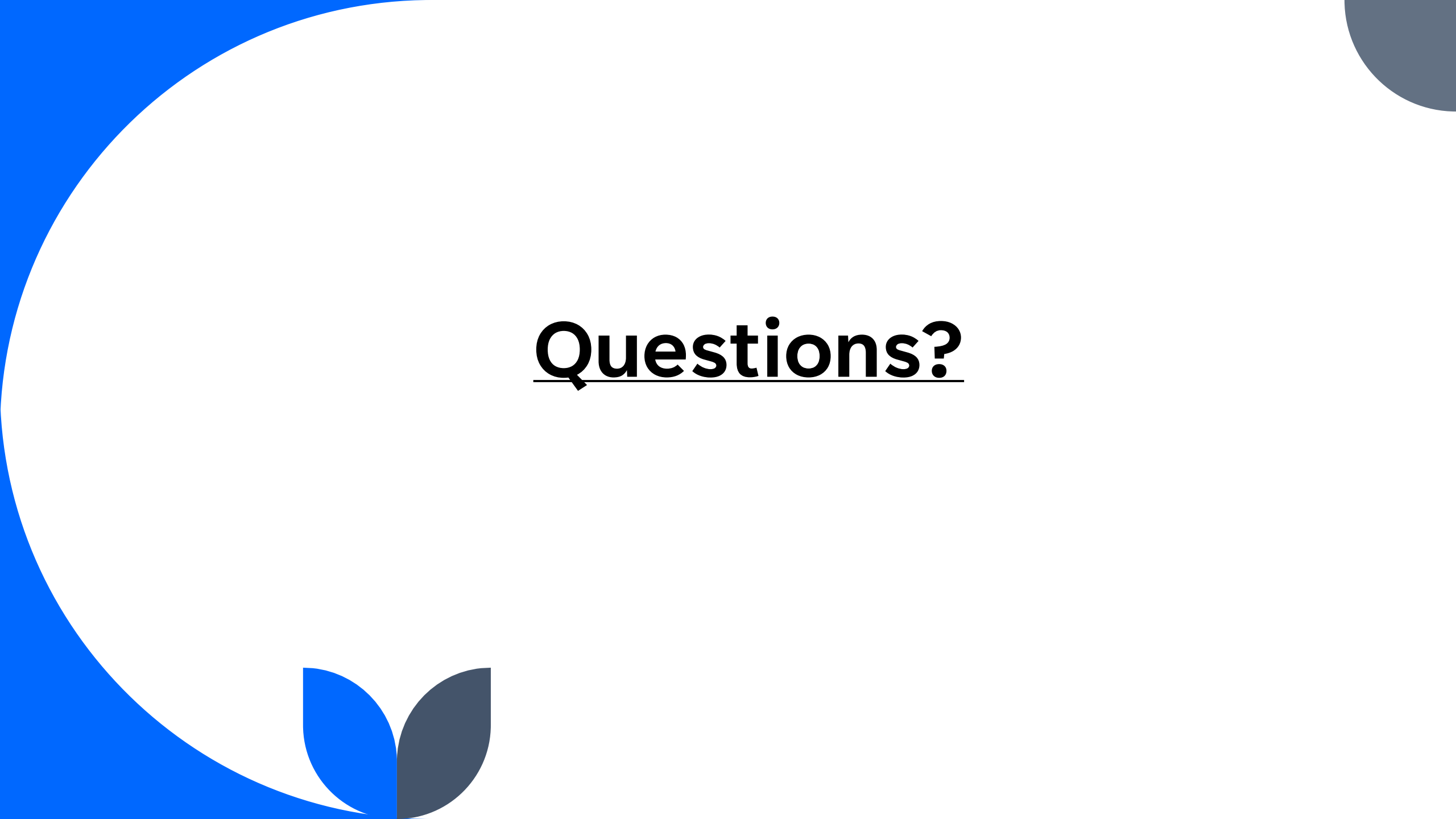
- Voir Dire
 - Address biases and stereotypes
- Evidence
 - Deal with Consent Defense
 - dispel Law and Order SVU Effect
- Address equities and weaknesses in closing arguments
 - Lead with strengths of the case and focus on defendant's predatory conduct in closing arguments

Saint Louis City Statistics

From January 01, 2024, -September 23, 2025:

- 46 cases issued under statute 566.030 and 566.060 (approx. 21 cases in 2024 and 25 cases in 2025)**
- 34 cases not disposed, 8-NTB, 3-dismissed(witness problem/evidence) and 1 plead)**





Questions?

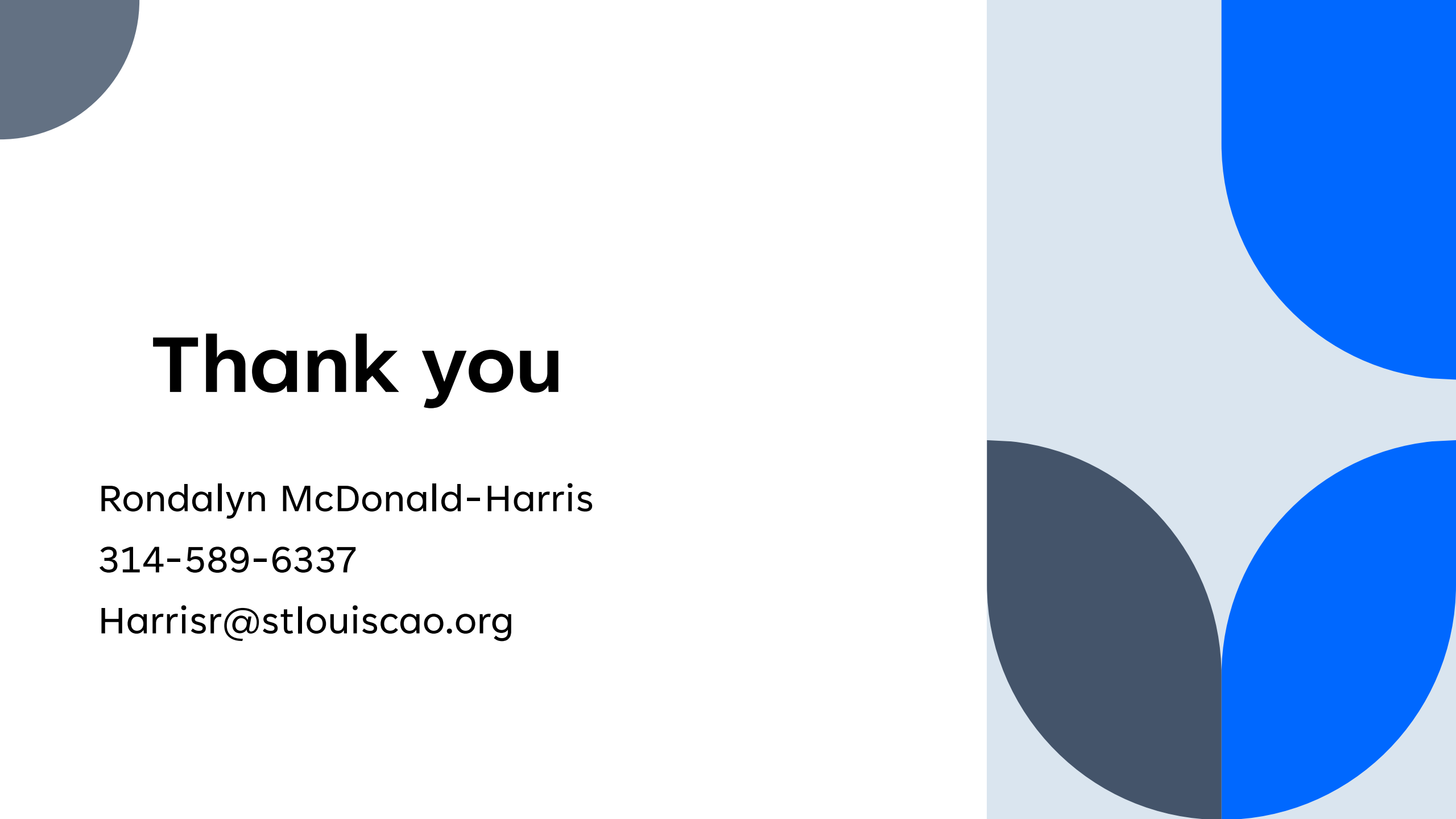


Final Takeaway

“I didn’t know that money could make the cell doors swing open. I didn’t know that if a woman was under the influence when the violence occurred, she wouldn’t be taken seriously. I didn’t know that if he was under the influence when the violence occurred; people would offer him sympathy. I didn’t know that my loss of memory would become his opportunity. I didn’t know that being a victim was synonymous with not being believed.”

“In fact, I need you to know it was all true. The friendly guy who helps you move and assists senior citizens in the pool is the same guy who assaulted me. One person can be capable of both. Society often fails to wrap its head around the fact that these truths often coexist, they are not mutually exclusive. Bad qualities can hide inside a good person. That's the terrifying part.”





Thank you

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