

BOATING UNDER THE INFLUENCE...

Helpful Insights from a Florida Fish & Wildlife Lieutenant **By Bob Lee**



FWC Officer patrols Biscayne Bay during the Columbus Day Regatta in Miami.



FWC Lt. George Pottorf demonstrates the simple process of running the strap of a Type II life vest under the arms of an individual in handcuffs. All prisoners transported aboard FWC patrol boats are put in Type II life vests for their safety.

“It was the BUI from hell,” says Lieutenant George Pottorf of the Florida Fish and Wildlife Conservation Commission (FWC), recalling an arrest he made for boating under the influence (BUI). It’s a case that Pottorf likes to tell his new officers about because it illustrates many variables of BUI enforcement and demonstrates how a seemingly innocent boating stop can quickly turn into a nightmare.

Caloosahatchee River, 1993

“I was patrolling a desolate area of the Caloosahatchee River in southwest Florida one afternoon,” says Pottorf, “when I stopped a small motor boat for no registration numbers. The vessel was occupied by two adult males and the deck was littered with beer cans. The operator, who was a construction worker in his early 30s, started shouting in a slurred voice, ‘Is this how you treat Vietnam vets?’ I did the math real quick, and it didn’t add up. He would have been too young for Vietnam.”

Pottorf had the operator get in his boat, where he started to administer a series of afloat field sobriety tasks. A few minutes later the operator said, “I’ve had enough of this,” and jumped overboard, swimming back toward his own vessel, which had drifted away. “I drove my boat around and cut him off by placing my boat between him and his boat,” says Pottorf. “I talked him into getting back in my boat and then placed him under arrest for BUI. “I got one cuff on him before he broke bad on me. We wrestled for a couple of minutes, as I tried to get his arm around behind him. Then he pushed away from me and picked up my paddle, holding it like a hatchet. I lunged at him, snatching the paddle away and throwing it overboard. We wrestled again, and he was still trying to

get back in the water. I was holding onto the cuffs when he yanked me off of the upper deck, causing me to do a somersault over the top of him; then he rolled over on top of me. I knew then I would have to hurt him to gain control,” says Pottorf.

Unexpectedly, Pottorf heard a voice, “Officer, do you need a hand?” A muscle bound 16-year-old boy had seen the ruckus and pulled alongside in his own boat to offer help. Pottorf yelled, “I need help right now!” The teenager jumped in the boat, yanked the operator’s head up by the hair and swung his fist, connecting with a vicious right cross. “When I felt him go limp, I pulled his other arm behind his back and finally got him cuffed,” says Pottorf. Pottorf called dispatch and requested backup to be waiting at a boat ramp two miles away.

The teenager tied his boat off to the bank then sat on the operator, who was still thrashing around and trying to jump out of the boat. Pottorf motored toward the ramp with the operator’s boat in tow. The passenger, who was also intoxicated, sat quietly in the operator’s boat. Both the passenger and the operator had life vests on.

“I was towing the operator’s boat at an idle speed,” says Pottorf, “when I heard a yell. I looked over my shoulder and saw that the operator’s boat had flipped over.

The passenger was treading water and all of the vessel’s belongings were drifting away. I put the passenger in my boat, then continued to tow the operator’s boat, now upside down, to the boat ramp.

“I don’t have words to describe how good it felt when I pulled into that boat ramp and found two of our officers waiting for me with a flatbed tow truck.”

Present Day

Pottorf has 23 years with the FWC and currently supervises a squad of five officers. Their patrol area covers 80 miles of the St. Johns River in northeast Florida, from Jacksonville south to Lake George. He is recognized in the agency as an expert in making BUI arrests.

When Pottorf trains his officers in making BUI arrests, he breaks the procedure down into different categories, much like you would a DUI arrest, except that there are different variables to consider on the water.

Described below are the different categories he covers in his instruction.

Reason to Stop

“A lot of officers are under the impression that we can make stops for no reason on the water,” says Pottorf. “That is not true. There is always a reason, and an officer defending a stop in court needs

to be able to articulate that reason.”

Three legal reasons to make a boating stop in Florida are:

1. Probable cause: The cause can be for something very minor, such as improper spacing of numbers, or for something more obvious, such as a boat blowing through a slow speed zone on a full plane
2. Administrative inspection for persons engaged in fishing
3. Administrative inspection of a vessel's safety equipment

Justification for stops under sections two and three can be found in the Florida Supreme Court Case of *State v. Casal* (410 So. 2d 152 Fla. 1982). It says that law enforcement officers have the authority to conduct random stops and limited searches to ensure compliance with boating and fishing regulations, such as proper safety equipment, boat registration, possession of fishing licenses and compliance with bag limits.

Tips for Detecting BUI's

An officer may suspect or detect BUI under the following conditions:

- When a vessel approaching a boat ramp runs in too fast, creating an unnecessary wake



Events like the Columbus Day Regatta on Miami's Biscayne Bay can be a target rich environment for BUI violations

- When the operator of a vessel underway doesn't make eye contact with an officer passing by; this may indicate a lack of situational awareness
- When an officer can smell alcohol; when approaching a vessel, position yourself so that you're on the same side the operator is on; this puts you in the best position to smell a person who has been drinking
- When a vessel operator continually goes the throttle while motoring

through a slow speed zone

- When you can hear raucous laughter or other indicators of partying on vessels passing through a slow speed zone;

Note: Officers have more time to observe others in a slow speed zone than you do when a vessel is underway.

Other tips:

During a boating safety inspection, make the operator show you the life

vests, fire extinguisher, etc. They will usually have to get up on their feet to do this, giving you the opportunity to see if the operator needs assistance standing up. Passengers will often jump up and get the life vests, trying to cover up for the operator. Politely explain to the passengers that this is something the operator must do. Make the operator do it.

If there's a minor violation, issue a warning to the operator and hand the pen over upside down. If they are intoxicated, they will often attempt to write upside down and not figure out what the problem is for some time.

Locations where hundreds of boats raft up to party, such as springs, islands or holiday events can be a target-rich environment for BUI arrests. These situations are better suited to directed patrol by teams of uniformed officers during high-activity periods. Insertion of plain-clothes officers into congested areas can also be a valuable tactic for detecting boat operators who are drinking excessively.

Field Sobriety Tasks - Afloat & on Land

"I think one of the biggest mistakes officers make is to run the afloat tasks prematurely," says Pottorf. "They should complete the entire boating safety inspection first. If the person refuses to do the Afloat sobriety tasks, at least the officer will have something to work with if he chooses to arrest the operator of the vessel for BUI." However, this is a judgment call, and officers must balance the totality of the circumstances in light of officer safety concerns.

When having a person do field sobriety tasks (FSTs) for a BUI, the tasks are divided up on the basis of what can be done on a boat and what can be done on land. The tasks done on a vessel are called the afloat sobriety tasks and tasks done on land are the remaining FSTs.

There will be occasions when all of the FSTs are done on land. An example of this situation would be an operator who has driven up to a boat ramp or pulled into a fuel dock and is suspected of BUI. In these situations, the operator is walked over to the nearest parking lot, where all of the FSTs would be completed.

Afloat sobriety tasks include:

- Horizontal gaze nystagmus (i.e., testing for involuntary rhythmic movement of the eyes)
- Finger count
- Hand pat; and
- Recitation of the alphabet

"If the person has not performed these tasks correctly," says Pottorf, "I ask them if they will come to shore with me so the remaining tasks can be completed. If they say no, I review the indicators I have and make a determination based on the totality of what I have observed as to whether or not this individual should be arrested for BUI.

"If they say yes, then I take them to shore. Once ashore, we give them 15 minutes to relax, so that they can get their land legs back. The remaining field sobriety tasks are then given: walk and turn, one-leg stand and finger to nose. I then make my evaluation as to whether an arrest is warranted," says Pottorf.

Tip: BUI suspects performing FSTs ashore are often barefoot or have on sandals, which many elect not to wear. If the tasks are conducted on pavement, issues of pavement temperature sometimes come up in court. Ask the suspect, "Are you comfortable standing barefoot on the pavement?" Most suspects answer in the affirmative.

As additional insurance, officer safety permitting, the officer can squat down and place their hand on the pavement for a few seconds to check the temperature as well. This deprives a defense attorney of the argument that the pavement was too hot or too cold for the tasks to be comfortably conducted.

Transportation of Suspect on a Patrol Boat

"We never handcuff individuals we transport to shore for FSTs," says Pottorf. "But we do make sure they have on a life vest. If circumstances dictate that we have to make an arrest on the water, the suspect is always handcuffed from behind. Officer safety comes first. If the suspect is handcuffed before a life vest can be placed on him a Type 1 or a Type 2 life vest can be slipped on and cinched up while the suspect remains in handcuffs."

The BUI Arrest

BUI arrests are normally made ashore after the FSTs have been completed. What sets a BUI arrest apart from a DUI is that the officer's patrol vehicle is usually not nearby. Officers who routinely make BUI's have learned to carry all of their BUI paperwork in a small, weather-resistant backpack or gear bag. It is not unusual for an officer to leave his patrol boat, hitch a ride in a transport vehicle along with his prisoner to

the jail, and then be picked up from the jail in a different vehicle for transport back to his boat. All necessary paperwork should be in the bag, along with any law books or cheat sheets that may be needed. Once you leave that boat, you can't just go back to it and pick up something you may have forgotten.

Evidence

"I normally photograph suspects and any containers in the vessel that may have held alcohol," says Pottorf. "I also look for bags that may have been used to transport alcoholic beverages and check for receipts. Often, there will be a date and time on the receipt, and that will give you an idea of how much was consumed and in what period of time."

Vessel Procedures - To Tow or Not to Tow

"There are no set procedures for how to handle a vessel once the operator has been arrested," says Pottorf. "Each event is unique in itself. If the operator is the owner of the vessel and gives permission for it to be driven by one of the passengers, we will allow that, provided that they are sober and capable of driving the vessel. If the operator is not the owner of the vessel, we will have the vessel towed. On large waterways where there are commercial tow boat companies, we will call them to come and get the boat. If it is a small inland lake, we usually tow the boat to a ramp where it can be picked up by a tow truck."

Conclusion

"Every BUI arrest is different," says Pottorf. "Bad weather conditions, remote locations and no back up often result in our officers having to constantly improvise.

"During my career, I've had four men jump out of my boat while conducting BUI investigations. Some I've had to fight, and others I've had to play tug of war with to keep in my vessel. Every time this occurs you learn a little bit more. The primary lesson for me is that officer safety comes first. If you get in one of my vessels, you will not find a loose paddle, oar or any other object that could be picked up and used as a weapon against me or one of my officers."

•*About the author: Lieutenant Bob Lee is retired from the FWC after 30 years. He has previously written articles for law enforcement and outdoor magazines. Contact him at: bl_gamewarden@hotmail.com.*