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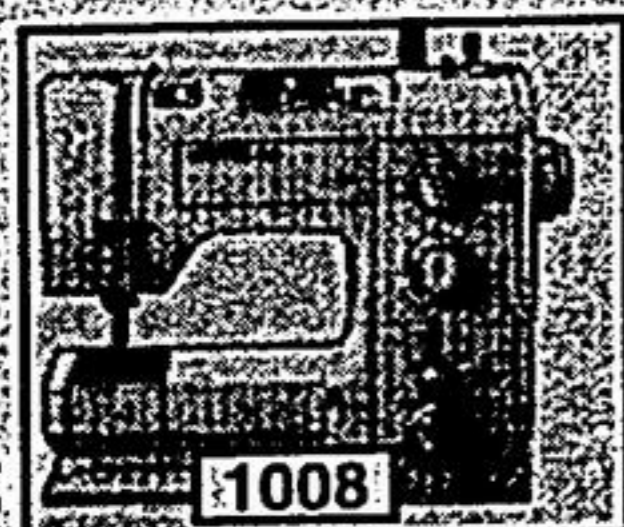
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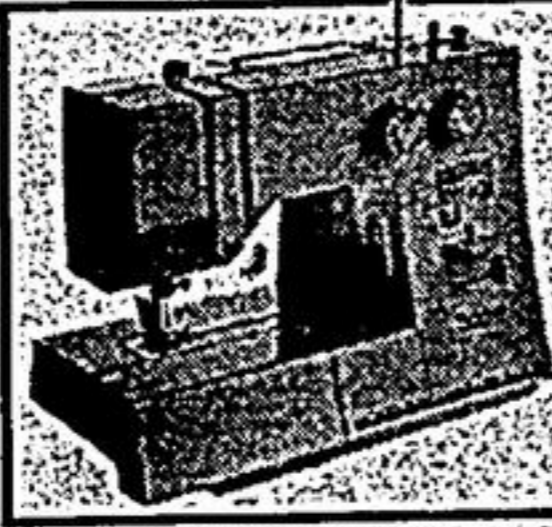
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# Crown attorney asks court to jail cop

*Jail time for cop in assault case would send message, Crown says*

BY RICK VANDERLINDE  
Staff Writer

A drunken off-duty York Regional Police officer who kicked a Richmond Hill man and called him a "n-----" should be jailed, a Newmarket court heard Thursday.

Crown attorney Robert Gattrell said incarcerating Ken Kyle, 49, will send a clear message to other "like-minded" citizens.

"This has had an impact on the public and it has had an impact on other police officers who don't want to be seen in that way," Gattrell said. "Visible minorities want to believe that the police are unbiased. Now if the (victim) ever has to deal with people in authority, it's always in the back of his mind, is this person 'one of those?'"

Kyle pleaded guilty to assaulting 29-year-old Dwight Hartley in a Newmarket parking lot last April.

Kyle, whose blood-alcohol level was more than twice the legal limit at the time, bumped into Hartley's car near Davis Drive and Main Street.

Gattrell said when Hartley tried to call the police to report an obvious drunk driver, Kyle became abusive.

"He said, 'I'm a police officer' and, in conjunction with that, he said, 'You're just a n-----,'" Gattrell said. "He was trying to put Mr. Hartley down, exercise control over him."

Gattrell said the level of racism during the assault is a substantial aggravating factor that warrants jail time.

But defence lawyer Harry Black said a jail term will end Kyle's otherwise spotless 26-year police career, when he faces a charge of discreditable conduct at an upcoming police disciplinary hearing.

"There has never been, in the province of Ontario, a police officer who has not been fired if he received one day in custody," Black said. "If he is sentenced to even one day, he would be fired."

Black called on Mr. Justice Terence O'Hara to hand Kyle a conditional discharge on the assault charge, even though a conviction has already been registered for impaired driving.

"At least there will be some indication by this court that Mr. Kyle should not receive the harshest penalty," Black said. "To use a racial epithet may bring on public contempt, but there are few professions where it brings charges, penalties and sanctions."

During the hearing, Black read an apology Kyle had written to Hartley, who sat at the back of court with a friend.

"I apologize for the words that I spoke. They were offensive, insulting and demeaning," Black said, reading from Kyle's letter. "I apologize for kicking you."

But outside the court, during a break, Hartley said the apology rang hollow nearly a year after the incident.

"This is like another phase of the court process," Hartley said. "If he had come up to me a week later and said, 'I'm sorry,' that's different. This isn't sincere."

Several character reference letters were entered as evidence at the sentencing hearing. One of those letters came from police union president Dave Kingston.

"He is an honest, hard-working family man," Kingston's letter said. "In 26 years, he's never had any disciplinary problems... There have been personal problems that have left him in this situation today. I feel Ken has addressed these problems and has taken swift action."

O'Hara is expected to hand down his sentence April 5.



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