

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32118
H/prt

_____AD3d_____

Argued - June 20, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-02328

DECISION & ORDER

The People, etc., respondent,
v Juan Griffith, appellant.

(Ind. No. 2755/06)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary Fidel and Donna Aldea of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered February 23, 2009, convicting him of rape in the first degree, sodomy in the first degree, sexual abuse in the first degree (two counts), and burglary in the first degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing and upon reargument (Braun, J.), of that branch of the defendant's omnibus motion which was to suppress his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The defendant contends that his statements to law enforcement officials should have been suppressed on the ground that they were obtained in violation of his indelible right to counsel. We disagree.

The indelible right to counsel, prohibiting interrogation unless the right is waived in the presence of counsel, attaches, inter alia, when a criminal action is formally commenced by the filing of an accusatory instrument (*see People v Grice*, 100 NY2d 318, 320-321; *People v Ramos*, 99 NY2d 27, 32-33). Here, however, no indictment had been filed in this matter at the time of the

defendant's statements.

Furthermore, at the time of his statements, the defendant had not yet been identified as "John Doe" in a separately filed indictment charging three other similar incidents. The filing of a "John Doe" indictment does not activate a defendant's right to counsel, since no specific individual has been singled out for prosecution (*see People v Dickson*, 133 AD2d 492, 493; *People v Timmons*, 95 AD2d 955, 956; *see also United States v Giacalone*, 508 F Supp 39, 42-43, *affd* 659 F2d 1063, *cert denied* 454 US 964). Accordingly, that branch of the defendant's omnibus motion which was to suppress his statements to law enforcement officials was properly denied.

The defendant's remaining contentions are without merit.

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court