



QUEENS COUNTY DISTRICT ATTORNEY  
125-QUEENS BOULEVARD  
KEW 01 GARDENS, NEW YORK 11415-1568



718.286.6000  
WWW.QUEENSDA.ORG

MELINDA KATZ  
DISTRICT ATTORNEY

**FOR IMMEDIATE RELEASE**  
WEDNESDAY, JANUARY 8, 2025

**CONTACT:** PRESS OFFICE (718) 286-6315  
[QDACommunications@queensda.org](mailto:QDACommunications@queensda.org)

**FOUR MEN INDICTED FOR ATTACKING HOMELESS SUBWAY PASSENGER**

*Defendants Allegedly Stole Belongings of 69-year-old Man on 7 Train;  
Victim Stabbed Two Men – One Fatally – While Being Attacked;  
No Charges to be Filed for Fatality*

Queens District Attorney Melinda Katz announced that four men were indicted by a grand jury and variously charged with attempted gang assault, assault and robbery for allegedly stealing the belongings of a man who was asleep onboard a 7 subway train in December. The 69-year-old victim woke up as his bags were being stolen and a fight ensued, leading to the stabbing death of one of the assailants. No charges will be brought for the fatal stabbing.

District Attorney Katz said: “The victim was accosted, without provocation, and our investigation has shown that he defended himself while attempting to retrieve his property. As a result, my office will not be filing charges for the fatality. As alleged, the defendants stole the possessions of a sleeping homeless man, leading to a violent altercation with one of the assailants being stabbed to death. The grand jury has returned serious charges against the four men, and they now face substantial prison time if convicted. Our subways must be safe for the millions of people who depend on public transportation. The New York City subway system has been outfitted with cameras and the video recovered in this case is vital to our prosecution.”

Defendants Henry Toapanta, 32; Oswaldo Walter, 29; Jose Valencia, 35; and Philipe Pena, 26, who are all undomiciled, were indicted on two counts of robbery in the second degree and assault in the second degree. Pena and Walter are additionally charged with attempted gang assault in the first degree.

Toapanta, Walter and Valencia were arraigned yesterday by Justice Michael Yavinsky and were ordered to return to court February 4. Pena, who is presently in the hospital, was arraigned on Friday by Judge Danielle Hartman. He is due back in court February 4. If convicted of the top charges, the defendants face a potential maximum sentence of up to 15 years in prison.

DA Katz said that, according to the investigation and criminal complaint, a 69-year-old man was asleep on a Manhattan-bound 7 train at approximately 12:20 a.m. on Sunday, December 22. As the train approached the 61st Street-Woodside station, two males – Oswaldo Walter and Stalin Moya -- entered the subway car. Walter removed one of the victim’s bags and brought it to a second subway car. Moya removed two more of the sleeping victim’s bags and woke the victim in the process.

A physical altercation began between the homeless passenger and Moya as the victim attempted to retrieve his belongings. Pena, Valencia, Toapanta and Walter entered from another subway car and joined the altercation. Valencia allegedly grabbed the 69-year-old, while Pena and Walter punched him. During the altercation, Moya allegedly removed another bag belonging to the victim and brought it to the second subway car.

The victim then followed the five men into the second subway car where two of his bags were concealed. While the victim was in between the subway cars, Pena attempted to close the subway door on the victim and punched him multiple times. The victim entered the subway car and was then surrounded by the five men, while defendants Walter, Toapanta and Valencia concealed one of the victim's bags under the seat and behind their legs. As the victim attempted to pick up his bag from the floor, Pena allegedly grabbed the victim and punched him multiple times, while Walter kicked the man. Moya allegedly rummaged through the victim's belongings that spilled out of a bag and onto the subway floor.

The victim suffered abrasions, lacerations, contusions and bleeding to his head and face and was taken to a local hospital for treatment.

During the altercation, the victim stabbed Moya and Pena, killing Moya.

Assistant District Attorney Christina Mavrikis of the District Attorney's Career Criminal Major Crime Bureau is prosecuting the case under the supervision of Assistant District Attorneys Michael Whitney, Bureau Chief, Roni C. Piplani, Deputy Bureau Chief, and under the overall supervision of Executive Assistant District Attorney of Major Crimes Shawn Clark.

#

*Criminal complaints and indictments are accusations. A defendant is presumed innocent until proven guilty.*

**Note to Editors:** Archived press releases are available at [www.queensda.org](http://www.queensda.org).

