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**FOUR MEN FACE FELONY CHARGES OF ASSAULT AND ROBBERY FOR ATTACKING
HOMELESS SUBWAY PASSENGER**

*As Alleged, Defendants Stole Belongings of 69-year-old Man on the 7 Train;
Two Men Stabbed – One Fatally*

Queens District Attorney Melinda Katz announced that four men were arraigned today and variously charged with felony robbery, attempted gang assault and assault for allegedly stealing the belongings of a man who was asleep onboard a 7 subway train. The victim woke up as five individuals were stealing and attempting to maintain his belongings and a fight ensued, leading to the stabbing death of one of the assailants.

District Attorney Katz said: “We cannot have thieves ganging up on any individuals inside the transit system. It is our responsibility to make sure that people have safe access to the subway, which is an intricate part of New York City. As alleged, the defendants stole the possessions of a sleeping man while on the train. As the victim attempted to get his possessions back, the defendants repeatedly punched and kicked the 69-year-old victim. During the altercation, the elderly man stabbed two of the assailants and one of the men died. As of now, no charges are filed against the elderly victim of the robbery. The investigation into the death is ongoing.”

Defendant Henry Toapanta, 32; Oswaldo Walter, 29; Jose Valencia, 35; and Philipe Pena, 26, who are all undomiciled, are charged with 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 by Judge Maria Gonzalez and were ordered to return to court December 27. Pena, who is presently in the hospital, will be arraigned at a later date. 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 a now-deceased man - entered the subway car. Walter removed one of the victim’s bags and brought it to a second subway car. The now-deceased man 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 the now-deceased man 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, the now-deceased man 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. The fifth, now-deceased man, 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 for treatment at a local hospital for treatment.

During the altercation, the victim stabbed two of the assailants, one of whom passed away. The investigation into the stabbing death is ongoing.

The investigation was conducted by the NYPD's Queens Homicide Squad and members of the 108th precinct.

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.

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

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