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New Narcotics Trial Is Won on Issue of Hypnosis

By EDITH EVANS ASBURY

A new trial was ordered yesterday for James Miller, a Connecticut hairdresser who had been convicted of participating in an international narcotics smuggling ring.

The United States Court of Appeals for the Second Circuit reversed his conviction and ordered a new trial because the defense and jury had not been told by the Government that it had questioned its principal witness under hypnosis before the trial.

The three-judge court, headed by Henry J. Friendly, and sitting at Foley Square, had upheld Miller's conviction previously.

Miller, the 42-year-old owner and operator of several beauty shops in the New Haven area, was convicted on June 2, 1966, after a jury trial in Hartford, and was sentenced to 12 years in prison. He has been free in \$200,000 bail as Steven B. Duke, professor of criminal law at Yale University, pressed his appeal without fee, and a committee of citizens campaigned in his behalf.

Driver Is Key Witness

Miller was arrested June 19, 1964, and was charged with being the man to whom 72 pounds of pure heroin, valued at \$56-million, was consigned. The heroin was seized at the Texas border.

Michel Caron, the French-Canadian driving the car inter-



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Steven B. Duke, who took up James Miller's defense.

to disclose the hypnosis deprived the defense of its right to cross-examine Caron concerning it.

Yesterday's opinion, written by Judge Friendly, stated that "developments during the trial placed a duty on the Government to disclose the hypnosis."

A new trial is necessary, he continued, because "there is a significant possibility that the undisclosed evidence might have led to an acquittal or a hung jury."

Caron's testimony, the opinion stated, "may have been the truth, but it was hardly the whole truth as known to Butler, and should have brought to his mind the hypnosis performed only three months before, and the interest the defense could have in this."

The two other judges who concurred in the opinion, were Leonard P. Moore and Wilfred Feinberg.

Mr. Butler questioned Caron

during the trial at Hartford. Percy Foreman, engaged by Miller when he was indicted in Texas, represented him at the trial but withdrew after the conviction.

Lucien Rivard, alleged leader of the smuggling ring, three Canadians, a Mexican and a Frenchman indicted with Miller in Texas were tried and sent to prison. The Canadian Government was embarrassed by the case, because of bribery charges involving Government officials. A Cabinet minister and a Member of Parliament resigned, and an official was arrested.

Miller, who is married and the father of a 6-year-old boy, has maintained since his arrest that he was the victim of mistaken identity. He and professor Duke also argued in the appeal that they could prove who the real culprit was.

cepted at the border, identified Miller from photographs, and was the Government's chief witness at the Miller trial.

After the trial was concluded, Professor Duke found that Caron had been questioned under hypnosis in a Texas jail by William Butler, an assistant United States Attorney at Houston, and by a local psychologist. Professor Duke argued in an appeal that failure