

Marcello Asks New Trial on Assault Count

Attorneys for Jefferson Parish rackets figure Carlos Marcello have asked for a new trial of his conviction of assaulting an FBI agent.

The lawyers contended yesterday in Houston the conviction resulted from an FBI plot.

Marcello, while preparing for the legal fight in Houston, was indicted Thursday by a federal grand jury in New Orleans on charges of "illegal presence in the United States." He was deported to Guatemala in 1961, but slipped back into this country.

MARCELLO WAS sentenced to two years in prison in 1968 on a charge of assaulting an FBI agent. The Supreme Court turned down his appeal Monday.

At the time of the trial, Marcello said he believed the FBI agent was a newsman.

The motion filed yesterday asks a new trial because of "newly discovered evidence" that is based on an affidavit secured from a former television cameraman.

ERBY AUCOIN, now a photographer for the New Orleans Saints, said the station in New Orleans for which he worked was called Sept. 30, 1966, and tipped that Marcello would arrive at the International Airport where he could be photographed and interviewed.

The caller said he was an FBI agent, Aucoin said. When he and a reporter arrived at the airport, other media were there.

In the crowd was an FBI agent, Patrick J. Collins, whom Aucoin said was posing as a newsman. He claimed that Marcello attempted to strike him. Marcello testified in his first trial that he was shielding his face from cameras.

MARCELLO WAS tried twice on the charge. In May 1968, a Laredo jury deadlocked and U.S. Dist. Judge Ben Connally declared a mistrial.

In September of 1968, Marcello was tried in Houston in the court of U.S. Dist. Judge John Singleton Jr.

Marcello was convicted in the second trial and Singleton sentenced him to two years in prison and ordered Marcello to pay a \$5,000 fine.

THE NEW motion filed yesterday by Houston lawyer Anthony Friloux claims that the FBI entrapped Marcello by setting up an assault situation.

U.S. Atty. Anthony J. P. Farris said the Department of Justice would oppose the motion. He said the information in the motion is "only an allegation and not even a new one."

Aucoin said in his affidavit that he was "confused by the call because the FBI doesn't give tips."

Judge Singleton may act on the motion early next week. Friloux said he will ask for an oral hearing perhaps next Monday.