

greater part of marijuana consumed in the United States is of foreign origin, there was still a good amount produced domestically and there was no way to assure that the majority of those possessing marijuana have any reason to know whether their marijuana is imported.¹¹³¹ The Court left open the question whether a presumption that survived the “rational connection” test “must also satisfy the criminal ‘reasonable doubt’ standard if proof of the crime charged or an essential element thereof depends upon its use.”¹¹³²

In a later case, a closely divided Court drew a distinction between mandatory presumptions, which a jury must accept, and permissive presumptions, which may be presented to the jury as part of all the evidence to be considered. With respect to mandatory presumptions, “since the prosecution bears the burden of establishing guilt, it may not rest its case entirely on a presumption, unless the fact proved is sufficient to support the inference of guilt beyond a reasonable doubt.”¹¹³³ But, with respect to permissive presumptions, “the prosecution may rely on all of the evidence in the record to meet the reasonable doubt standard. There is no more reason to require a permissive statutory presumption to meet a reasonable-doubt standard before it may be permitted to play any part in a trial than there is to require that degree of probative force for other relevant evidence before it may be admitted. As long as it is clear that the presumption is not the sole and sufficient basis for a finding of guilt, it need only satisfy the test described in *Leary*.”¹¹³⁴ Thus, due process was not violated by the application of the statute that provides that “the presence of a firearm in an automobile is presumptive evidence of its illegal possession by all persons then occupying the vehicle.”¹¹³⁵ The division of the Court in these cases

¹¹³¹ 395 U.S. at 37–54. Although some of the reasoning in *Yee Hem*, *supra*, was disapproved, it was factually distinguished as involving users of “hard” narcotics.

¹¹³² 395 U.S. at 36 n.64. The matter was also left open in *Turner v. United States*, 396 U.S. 398 (1970) (judged by either “rational connection” or “reasonable doubt,” a presumption that the possessor of heroin knew it was illegally imported was valid, but the same presumption with regard to cocaine was invalid under the “rational connection” test because a great deal of the substance was produced domestically), and in *Barnes v. United States*, 412 U.S. 837 (1973) (under either test a presumption that possession of recently stolen property, if not satisfactorily explained, is grounds for inferring possessor knew it was stolen satisfies due process).

¹¹³³ *Ulster County Court v. Allen*, 442 U.S. 140, 167 (1979).

¹¹³⁴ 442 U.S. at 167.

¹¹³⁵ 442 U.S. at 142. The majority thought that possession was more likely than not the case from the circumstances, while the four dissenters disagreed. 442 U.S. at 168. See also *Estelle v. McGuire*, 502 U.S. 62 (1991) (upholding a jury instruction that, to dissenting Justices O'Connor and Stevens, *id.* at 75, seemed to direct the jury to draw the inference that evidence that a child had been “battered” in the past meant that the defendant, the child’s father, had necessarily done the battering).