Mississippi College Law Review

Volume 1 | Issue 2 Article 8

1-1-1979

The Insanity Defense in Mississippi: Promises and Performance - Lias v. State

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Custom Citation
1 Miss. C. L. Rev. 213 (1978-1980)

THE INSANITY DEFENSE IN MISSISSIPPI: PROMISES AND PERFORMANCE

Lias v. State, 362 So. 2d 198 (Miss. 1978).

Sometime during the evening of February 17, 1974, or the early morning of February 18, 1974, Frankie Lee Lias shot and killed seven people and wounded an eighth.[1] He was tried for the murders of four of his victims.[2] His defense was insanity.[3] A psychiatrist from the Mississippi State Hospital at Whitfield testified that Lias was a paranoid schizophrenic and incapable of distinguishing right from wrong at the time of the killings.[4] It was stipulated that another psychiatrist with the hospital would have given the same testimony.[5] Certain lay testimony was offered which indicated that Lias might have been insane and unable to appreciate the wrongfulness of his acts.[6] Lay testimony for the state indicated that Lias did know the nature and consequences of his acts[7] but the prosecution produced no lay or expert testimony directly concerning Lias' ability to distinguish right from wrong.[8] A long, rambling "confession" which made no reference to the killings was admitted.[9]

Due to daily medication Lias at the time of the trial was in a state of remission and was not dangerous. Yet without the medication Lias might commit further acts of violence. The Mississippi Code provides for commitment of a defendant acquitted by reason of insanity if the jury certifies that the defendant is insane *and* dangerous.[10] No code provision or case law provides for the commitment of a defendant

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[1]Lias v. State, 362 So. 2d 198, 199 (Miss. 1978).

[2]*Id.* (his wife, daughter, sister-in-law and brother-in-law).

[3]*Id.*

[4]*Id.*

[5]*Id.*

[6]*Id.* Lias called himself Black Moses and claimed to be able to communicate with God. On the night of the killings he told his brother, "The Lord told me to come to him and bring all those around me."

[7]*Id.* at 199, 200. Lias told his brother he had "blooded" the community with his rifle. He told an acquaintance that he had, had trouble with his family, in-laws, and neighbors and had killed everyone except one Francesca.

[8]*Id.* at 199, 201. A medical doctor testified that Lias appeared "solemn and remorseful" when seen in the jail a day or two after the killings. His brother testified that Lias knew the meaning of sin.

[9]*Id.* at 200. *See also* Harvey v. State, 207 So. 2d 108 (Miss. 1968).

[10]MISS. CODE ANN. § 99-13-7 (1972).

> When any person shall be indicted for an offense and acquitted on the ground of insanity the jury rendering the verdict shall state therein such ground and whether the accused have since been restored to his reason, and whether he be dangerous to the community. And if the jury certify that such person is still insane and dangerous the judge shall order him to be conveyed to and confined in one of the state asylums for the insane.

who is presently sane but potentially dangerous.[11] The jury found the defendant guilty, specially finding in writing that the defendant had been sane at the time of the killings.[12] The Mississippi Supreme Court affirmed the conviction, holding that it was not able to find the jury's verdict arbitrary or against the overwhelming weight of the evidence.[13] Mr. Chief Justice Patterson was of the opinion that the jury's verdict was against the overwhelming weight of the evidence but concurred on the basis of the need for institutionalization of the defendant because of his being a potential danger to the community.[14]

As the Mississippi Supreme Court forcefully stated in *Harvey v. State*,[15] "All civilized society, from early antiquity has recognized that in order to hold persons responsible for crime it was necessary for such person to have sufficient mental understanding to form a criminal intent."[16] The law promises that those who act without criminal intent, no matter how vile their actions, shall not be punished. The *Lias* case illustrates how empty that promise can be, at least in certain circumstances. The supreme court plainly failed to apply the law as it exists. Further, the "luck" of this defendant in having been restored to his sanity prior to his trial points out serious new problems and inadequacies in the law that should be dealt with promptly by the legislature or the supreme court.

In Mississippi under the M'Naghten rule an accused is criminally responsible for his actions if among other things he is able to distinguish between right and wrong.[17] The Mississippi Supreme Court, rejecting the practice of some other jurisdictions,[18] placed the burden of proof on the issue of insanity on the prosecution.[19] The rule has remained unchanged since announced in 1879 in *Cunningham* v. *State*.[20]

> Every man is presumed to be sane and in the absence of testimony engendering a reasonable doubt of sanity, no evidence on the subject need be offered; but whenever the question of sanity is raised and put in issue by such facts, proven on either side as engender such doubt, it devolves upon the [s]tate to remove it and to establish the sanity of the

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[11]362 So. 2d 198, 202 (1978) (Patterson, C. J., specially concurring).

[12]*Id.* at 201.

[13]*Id.*

[14]*Id.* at 202, 203.

[15]207 So. 2d 108 (Miss. 1968).

[16]*Id.* at 110.

[17]Johnson v. State, 223 Miss. 56, 76 So. 2d 841 (1955).

[18]Cunningham v. State, 56 Miss. 269, 274, 31 Am. Rep. 360, 362 (1879). The court rejected the notion that a defendant must prove his insanity either by a preponderance of the evidence or beyond a reasonable doubt.

[19]*Id.*

[20]*Id.*

> prisoner to the satisfaction of the jury, beyond all reasonable doubt arising out of all evidence in the case.[21]

Unless the state proves the defendant's sanity beyond *all reasonable doubt* the defendant is entitled to an acquittal.[22]

It was uncontested that the defense in the instant case had produced sufficient evidence according to the test in *Waycaster v. State*[23] to place the defendant's sanity in issue and place the burden of proof on the prosecution.[24] The Mississippi Supreme Court was asked to reverse Lias' conviction on the grounds that the state had failed to sustain its burden of proof.

Recognizing that a jury may miscarry its duties, the Mississippi Supreme Court will overturn convictions for insufficiency of evidence. Two rules of law tend to restrict reversals to the most extreme cases.[25] First, the court must accept as credible all evidence supporting the jury's verdict.[26] The likelihood of a reversal is further reduced by the court's use of a standard in reviewing convictions which is inconsistent with the standard required for conviction in the first instance.[27]

In Mississippi a jury verdict in a criminal case will not be disturbed unless it is clear that the "verdict is the result of bias, passion, or prejudice, or is manifestly against the overwhelming weight of credible evidence."[28] The majority opinion recited the facts and refused to overturn Lias' conviction because it was not "unsupported by the facts."[29] The *Lias* case illustrates vividly that very little evidence is required to support a conviction. The *Lias* case further indicates that the stated standard by which cases are reviewed may be

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[21] *Id.* at 276, 31 Am. Rep. at 365. *Cf.* Pollard v. State, 53 Miss. 410 (1876) (burden of proof were alibi is the defense).

[22] 56 Miss. 269, 31 Am. Rep. 360 (1879).

[23] 185 Miss. 25, 187 So. 205 (1939).

[24] *Id.* at 36, 187 So. at 207. "[T]he test should be whether the acts and conduct of the accused, and the opinions of the witnesses on the issue of his sanity would reasonably be calculated to raise such [reasonable] doubt in the mind of the jurors." *Id.*

[25] *See generally* Holloway v. State 312 So. 2d 700 (Miss. 1975); Gambrell v. State 238 Miss. 892, 120 So. 2d 758 (1960).

[26] Campbell v. State, 278 So. 2d 420 (Miss. 1973); McClelland v. State, 204 So. 2d 158 (Miss. 1967); Scott v. State, 185 Miss. 454, 188 So. 546 (1939).

[27] Guilt, including the defendant's sanity, must be proved beyond a reasonable doubt to convict. Cunningham v. State, 56 Miss. 269, 31 Am. Rep. 360. A conviction will not be reversed unless the verdict is manifestly against the overwhelming weight of the credible evidence. Campbell v. State, 278 So. 2d at 423 (Miss. 1973).

[28] Simmons v. State, 301 So. 2d 565, 568 (Miss. 1974). *But cf.* Nagell v. United States, 392 F.2d 934 (5th Cir. 1968) (a jury verdict should be overturned if a reasonable mind must have had a reasonable doubt.)

[29] 362 So. 2d at 201. This language does not express the proper test for the courts in weighing jury verdicts. This language appears to be dicta but its presence in the opinion makes it unclear exactly what standard the court did use.

stronger than the standard by which the court, guided by practical considerations actually judges jury verdicts. An examination of two cases in which the Mississippi Supreme Court has overturned the jury's determination of a defendant's sanity and a comparison of those two cases with the present case is instructive.

In *Gambrell v. State*[30] and *Holloway v. State*[31] convictions were reversed because the state's evidence was not sufficient to support a finding by the jury of sanity beyond a reasonable doubt. Gambrell, Holloway, and Lias were all diagnosed to be suffering from paranoid schizophrenia.[32] Holloway was charged with assault and battery with intent to kill.[33] Gambrell and Lias were charged with murder.[34]

Robert Holloway was committed to the Mississippi State Hospital at Whitfield and his mental condition diagnosed before the assaults with which he was charged occurred.[35] The assaults occurred when Holloway was released while supposedly in a state of remission.[36] The medical testimony on Holloway's mental state was "convincing and unequivocal,"[37] as was the medical testimony in *Lias*.[38] Holloway was confined from 1963 until 1973 before being brought to trial.[39] Lias received treatment for nearly three years before being brought to trial.[40] If as the court clearly stated, Holloway's ten year commitment was not conclusive on the issue of his sanity, the length of Lias' commitment was not conclusive either. But as in Holloway's case, the jury's finding of sanity is an ending "not untinged with irony."[41]

In the *Gambrell* case extensive lay testimony and documents established the fact that the defendant suffered from various delu-

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[30]238 Miss. 892, 120 So. 2d 758 (1960).

[31]312 So. 2d 700 (Miss. 1975).

[32]238 Miss. at 900, 120 So. 2d at 761 (Gambrell); 312 So. 2d at 701 (Holloway); 362 So. 2d at 199 (Lias).

[33]312 So. 2d at 701.

[34]238 Miss. at 892, 120 So. 2d at 758.

[35]312 So. 2d at 701.

[36]*Id.*

[37]*Id.*

[38]362 So. 2d at 201, 202.

[39]312 So. 2d at 701.

[40]Record, vol. 1 at 16, vol. 2 at 177, Lias v. State, 362 So. 2d 198 (Miss. 1978). Lias was admitted to the state hospital in March 1974 and diagnosed by the staff in May 1974. His trial began in February 1977.

[41]Holloway v. State, 312 So. 2d at 702. Particularly ironic is the similarity of language used by the court in reversing Holloway's conviction and affirming Lias' conviction. "While the question presented by the evidence is close indeed, we are unable to say with complete confidence that Holloway's sanity at the time of the assault was established sufficiently to support a finding beyond a reasonable doubt that he was sane." *Id.* "While admitting the closeness of the factual determination we also acknowledge that such determination is the purpose for which juries exist. We are unwilling on an appeal to overturn a jury determination unless such determination is unsupported by the facts." Lias v. State, 362 So. 2d at 201.

sions.[42] A private psychiatrist, acknowledged by the state to be an expert, testified[43] that he was absolutely of the opinion that Gambrell was unable to distinguish right from wrong.[44] This psychiatrist's examination of the defendant had lasted for forty-five minutes to an hour.[45] The state introduced testimony of a Whitfield staff member who stated that a period of two to four weeks was necessary for a proper diagnosis of a patient's mental condition,[46] thereby calling into question the validity of the testimony of the defense's expert witness. Six lay witnesses testified for the state that the defendant appeared normal and sane.[47] The court in *Gambrell* held that the

> [s]tate made what amounted to little more than a token effort to meet the burden of proving appellant was sane. . . . Even when viewed in the light most favorable to the [s]tate, it is our opinion that consideration of the evidence will overwhelmingly convince any objective mind that appellant was insane at the time of the killing.[48]

The expert testimony in *Lias* appears even more convincing and it is definitely not unfair to classify the state's effort to rebut the defendant's evidence as token.[49]

Why, given the similiarity of facts in *Gambrell*, *Holloway* and *Lias*, did the supreme court affirm Lias' conviction? Perhaps one factor was the inadequacy of available verdicts discussed below in Part Two. It seems worth noting that another possible reason for these two reversals is the fact that it was "easy" for the court to reverse Gambrell's and Holloway's convictions. Holloway was confined for ten years prior to trial.[50] He had in effect already done his time and imposing further sentence might seem unjust.[51] In *Gambrell* two other grounds for reversal existed,[52] and there seemed little likelihood of the defendant being loosed on society.[53]

In one way the *Lias* case may be distinguished from the other two.

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[42]238 Miss. 892, 120 So. 2d 758 (1960).

[43]The psychiatrist's testimony was a reply to a lengthy hypothetical based on the facts. *Id.* at 761.

[44]*Id.*

[45]*Id.*

[46]*Id.* This staff member offered no opinion as to the defendant's sanity and could not say the diagnosis of the private psychiatrist was erroneous.

[47]*Id.* Like Lias, Gambrell at times carried on conversations and appeared rational and coherent.

[48]238 Miss. at 903, 120 So. 2d at 762-63.

[49]The state in this case did not even attempt an attack on the validity of the psychiatrist's diagnosis as was done in Gambrell.

[50]312 So. 2d at 701.

[51]Holloway was sentenced to two consecutive seven years sentences.

[52]238 Miss. 892, 120 So. 2d 758. (Improper jury instruction implying acquittal by reason of insanity would set defendant free). (Lower court erred in refusing to grant motion for new trial on grounds of newly discovered evidence).

[53]The defense psychiatrist testified that the defendant was insane at the time of trial. *Id.* at 900, 120 So. 2d at 761.

The prosecution's theory, though backed by scanty evidence, suggested a possibility that Lias might have been sane at the time of the killings. Lias' confession indicated his knowledge of his wife's infidelity, actual or imagined, which the state claimed was the motive for the killings.[54] The state also advanced the theory that the killings had induced the insanity.[55] On cross-examination the psychiatrist admitted this might be true.[56] The prosecution's evidence suggested a possibility, not a probability, of sanity and fell far short of proving sanity beyond a reasonable doubt. Gambrell's conviction was reversed because the court was convinced of his insanity.[57] Perhaps because Lias' insanity was not established beyond all doubt his conviction was upheld.

Since the jury is the sole judge of the weight and credibility of all the evidence,[58] the court's role in reviewing the evidence to determine its sufficiency to support a conviction is properly a limited one. In Lias' case the weight to be given expert testimony is crucial in determining the sufficiency of the evidence against him.

As the supreme court has stated repeatedly, the testimony of experts on insanity is not conclusive upon the jury, but rather advisory.[59] Several reasons have been advanced for not forcing juries to defer to the judgment of experts. One reason for allowing the jury to freely decide the weight to be given the opinion testimony of experts is the fear that an expert might be deceived by one feigning insanity.[60] Further, the weight to be given expert testimony may be lessened as in *McGarrh v. State*[61] by the possibility that an improper case history might influence the expert's finding.

The court in *Herron v. State*[62] recognized that the conclusions of

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[54]362 So. 2d at 201.

[55]*Id.*

[56]*Id.*

[57]238 Miss. at 903, 120 So. 2d at 763.

[58]Campbell v. State, 278 So. 2d 420 (1973).

[59]Smith v. State, 245 So. 2d 583 (Miss. 1971).

[60]Wood v. State, 58 Miss. 741 (1881).

> How much weight is to be given to the opinion of a witness on the question of insanity depends, like the weight to be given all other opinions, upon the intelligence of the witness and his opportunities of observation; and while the testimony of a professional man, with equal opportunities would ordinarily be more reliable than that of a non-professional, the testimony of an intelligent friend who had known the subject of the inquiry for years, might be more weighty than that of the most experienced expert who had seen him only since the condition of his intellect had become a matter of investigation. Craft and deceit might mislead the one into an error which the lifetime acquaintance and observation of the other would readily detect.

Id. at 742.

[61]249 Miss. 247, 148 So. 2d 494 (1962). One doctor testifed that the case history taken from the defendant might have influenced his opinion as to the defendant's sanity. *Id.*

[62]287 So. 2d 759 (Miss. 1974).

expert witnesses are not infallible. The opinion testimony of an expert "must be based upon his study and his own experience and if either is lacking, deficient or immature, his conclusions may fall short of the accuracy essential to a true verdict."[63] On the basis of the evidence of the circumstances of the act and the conduct of the defendant, the jurors using "common sense or . . . applying the lessons of human experience,"[64] may form their own opinion as to the defendant's sanity.[65]

The right and duty of the jury to determine the credibility of and the weight to given testimony should not be a license to arbitrarily ignore expert opinion.[66] The supreme court in *Lias* said that an arbitrary verdict should be reversed. The expert opinion was clear, unequivocal, and uncontradicted in the *Lias* case.

The diagnosis of the defendant was not the opinion of one man hired by the defendant, but rather the unanimous opinion of the entire psychiatric staff at a state mental institution.[67] There could be no suggestion of bias on the part of the experts. Certainly with nearly three years of observing and treating the defendant, the experts had sufficient facts on which to base a diagnosis,[68] and that diagnosis deserved to be given substantial weight in the jury's decision.

In the face of such convincing, unchallenged, and undoubtedly valid expert testimony, the jury's finding of sanity should have been found by the Mississippi Supreme Court to be arbitrary and against the overwhelming weight of the evidence.

PART TWO

Mr. Chief Justice Patterson in his concurring opinion recognized the dilemma of the jury and the court. He concluded that no clear provision is made in statute or case law for the criminal commitment of defendants like Lias. If the Mississippi Code[69] allowed the jury to certify that an acquitted defendant was insane *or* dangerous to the community, Lias could have been committed by the jury's certificate without further hearing.[70] The chief justice recognized that "[I]t is very unlikely that a jury by its verdict would return a multiple killer to the streets even though criminal intention to commit the act was absent."[71]

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[63] *Id.* at 762.

[64] Smith v. State, 245 So. 2d 583, 595 (1971).

[65] *Id. See* Saucier v. State, 328 So. 2d 355 (1976).

[66] United States v. Harper, 450 F.2d 1032, 1037 (5th Cir. 1971).

[67] 362 So. 2d at 201. Record, vol. 1 at 16, 17.

[68] *See* note 41 *supra.*

[69] MISS. CODE ANN. § 99-13-7 (1972). *supra* note 10.

[70] *Id.*

[71] 362 So. 2d at 202 (concurring opinion).

The reluctance of a jury in a case like this to find the defendant not guilty by reason of insanity is best understood in terms of an apprehension that if loosed the defendant will commit further acts of violence. A study of juries by the University of Chicago Law School showed that in every case the jury considered the likely disposition of the defendant.[72] The study further showed that jurors who had originally favored a finding of insanity were often persuaded to vote for the guilty verdict rather than allow the defendant to be released.[73]

The instructions on the verdicts, the jury in the *Lias* case could have rendered, offered "no realistic alternative to a verdict other than murder."[74] The jury could find the defendant guilty; not guilty; not guilty by reason of insanity and certify that he was dangerous because still insane; or not guilty by reason of insanity and certify that he has since been restored to his reason.[75] Since the defendant had indisputably killed those persons he was charged with murdering,[76] and since he was indisputably sane at the time of the trial,[77] the jury had only two options: convict Lias or let him go "scot free." With the options given them and their legitimate concern for the community, the jurors' verdict is not surprising.

CONCLUSION

The law promises that persons who act without criminal intent and who are not morally blameworthy shall not be punished for acts that are otherwise criminal. The holding of *Cunningham*[78] promises that the burden of proof is upon the prosecution as to an accused's sanity. For these promises to have much practical meaning in cases such as the present one, the law must either allay the fears of the jury by providing for the commitment of defendants like Frankie Lee Lias or must show an increased willingness to overturn convictions where a reasonable doubt of the accused's sanity exists.

The criminal commitment procedures in Mississippi have been rendered inadequate because of medical advances in the treatment of mental illness. The statutes appear to be based on the assumption that mental illness, severe enough to excuse an accused, will be of a more or less permanent nature. The apparently successful treatment of Lias illustrates that this assumption may no longer be valid. Several options are available and the legislature might choose to adopt pro-

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[72]Weihofen, *Procedure for Determining Defendant's Mental Condition Under the American Law Institute's Model Penal Code*, 29 TEMP. L. Q. 235, 247 (1956).

[73]*Id.*

[74]362 So. 2d at 202 (concurring opinion).

[75]*Id.*

[76]*Id.* at 199.

[77]*Id.* at 203.

[78]56 Miss. 269.

cedures in effect in other jurisdictions or develop new ones to cope with defendants who have been restored to their sanity but nevertheless pose a potential hazard to their communities.

The Mississippi Legislature could provide for the mandatory commitment of any defendant acquitted by reason of insanity.[79] To be sure that such procedure could withstand a challenge on due process grounds, a procedure for review following commitment should also be enacted.[80] Another option would be to grant discretionary power to trial judges to commit defendants following acquittal.[81] The Mississippi Legislature could simply amend the present code section to allow juries to commit defendants who are certified as being insane or dangerous.

Another option would be the adoption of a procedure analogous to the one set forth in *Brown v. Jaquith*.[82] In that case it was held that a circuit court had power to refer a defendant found incompetent to stand trial to the chancery court for civil commitment proceedings. The affidavit of the court would be accepted in lieu of the certificate required by Section 41-21-65 of the Mississippi Code. A procedure could easily be established by the legislature or the supreme court for such a referral of an acquitted defendant. The commitment of persons who are not insane raises questions as grave as those raised by punishment of persons acting without criminal intent. The legislature may have to eventually develop alternatives not involving incarceration as the medical profession becomes more successful in treating grave mental illness. A system providing for closely supervised maintenance of persons like Lias on an outpatient basis might in the future become feasible. Such a system would be commendable in that both the freedom of the individual and the safety of the community would not be greatly impaired.

In addition to statutory reforms to provide more realistic alternatives for courts and juries, consideration should be given to adopting a more meaningful standard of review of jury verdicts. One standard for review of jury verdicts exists for all criminal cases: a jury's determination will not be overturned unless it is clearly arbitrary, the product of prejudice or passion or against the overwhelming weight of the evidence.[83] The standard has been unquestioned. However, when the consideration of what will likely happen to a

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[79] *See*, NEV. REV. STAT. § 175.521 (1977).

[80] *See*, DEL. CODE ANN. 11 § 403(b) (1974). *See generally* Jackson v. Indiana, 406 U.S. 715, (1972). (Indefinite commitment for incompetency to stand trial without safeguards provided in civil commitment proceedings was a denial of equal protection of the laws).

[81] ARK. STAT. 1947 § 41-612 (1977 Replacement).

[82] 318 So. 2d 856 (Miss. 1975).

[83] Simmons v. State 301 So. 2d 565, (Miss. 1974); Campbell v. State, 278 So. 2d 420 (Miss. 1973).

defendant is preliminary to deciding the issue of his sanity, a jury's determination of an accused's sanity does not merit being given such overwhelming weight by an appellate court.[84] The announced standard of review in the Fifth Circuit Court of Appeals, if adopted by the Mississippi Supreme Court, could make appellate review more meaningful. Under that standard an appellate court would reverse convictions where "reasonable doubt must have existed in the minds of reasonable jurors"[85] as to the accused's legal sanity.

Judge Bazelon, in paraphrasing La Rouchefoucauld, could have been summarizing the state of the law on the insanity defense in Mississippi when he said "[T]he law like the rest of us 'promises according to [its] hopes' but perform[s] according to [its] fears."[86] *Cunningham* declared the law's hope and its promise. *Lias* illustrates how in fear the law fails to live up to its promise.

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[84]29 TEMP. L. Q. 235, 247 (1956).

[85]Nagell v. United States, 392 F.2d 934, (5th Cir. 1968).

[86]Bazelon, *The Morality of the Criminal Law*, 49 S. CAL. L. REV. 385, 389. From LA ROUCHEFOUCAULD, MAXIMES, 61 (F. C. Green ed. 1945).