

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner,

: Case No. 3:08-cv-280

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent.

:

ORDER

Respondent has indicated his intention to photograph the physical evidence in this case. The Court declines to permit removal of the physical evidence from its present containers for photographing because such removal poses risk of contribution of deterioration of evidence. See *House v. Bell*, 547 U.S. 518 (2006).

The Court will reconsider its ruling upon a motion from Respondent and for good cause shown or with the consent of Petitioner's counsel.

March 16, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge