



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0056-11

AARON SOMERS, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE TENTH COURT OF APPEALS
BRAZOS COUNTY**

COCHRAN, J., filed a concurring opinion in which HERVEY, J., joined.

OPINION

I join the majority opinion with the understanding that we are assessing *only* the general scientific reliability of an EMIT test. We are not addressing the question posed by Judge Meyers and Judge Johnson concerning the relevancy of this EMIT test to a disputed issue in appellant's trial. We are not addressing whether such an unconfirmed EMIT test would be admissible when offered to show some purported connection between the results of the EMIT test and the accident victim's cause of death. We are not addressing the

ultimate admissibility of this “unconfirmed” EMIT test into evidence. And we are certainly not addressing the question of whether the trial court abused its discretion in excluding this evidence. Those are entirely distinct questions from the one that we resolve. And those questions are not before us.

Filed: June 6, 2012

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