

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 13 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-50120

Plaintiff-Appellee,

D.C. No. 5:17-cr-00159-PA-1

v.

PATRICK JOHN BACON,

ORDER

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted January 6, 2020
San Francisco, California

Before: WATFORD and BENNETT, Circuit Judges, and RAKOFF,* District Judge.

This case was reheard en banc by order of this court. Dkt No. 72.

Consistent with the opinion of the en banc court, *United States v. Bacon*, No. 18-50120, 2020 WL 6498258 (9th Cir. Nov. 5, 2020) (en banc), we remand this case to the district court with the following instructions. We instruct the district court to conduct whatever proceedings it deems appropriate to determine whether Dr.

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

Karim’s testimony was admissible (reliable) pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as articulated in our per curiam opinion, *United States v. Ray*, 956 F.3d 1154 (9th Cir. 2020), vacated in part by Bacon, 2020 WL 6498258. If the district court finds that Dr. Karim’s testimony was admissible in accord with the proper method of evaluation, we direct the court to grant Bacon a new trial. If the district court finds that Dr. Karim’s testimony should be excluded in accord with the proper method of evaluation, we direct the court to reinstate Bacon’s conviction and sentence. We find this remand “just under the circumstances.” 28 U.S.C. § 2106; *Bacon*, 2020 WL 6498258, at *4.

VACATED AND REMANDED.