

1 Officer Miller’s testimony and her conviction for driving while under the influence
2 of intoxicating liquor or drugs (DWI), following a bench trial in metropolitan court.
3 This Court issued a calendar notice proposing to adopt the district court’s
4 memorandum opinion with one point of clarification. Specifically, we noted that the
5 district court had relied on *State v. Harper*, 2011-NMSC-044, ¶ 15, 150 N.M. 745,
6 266 P.3d 25, in affirming the trial court’s decision, and that the New Mexico Supreme
7 Court had subsequently clarified *Harper*’s holding in *State v. Le Mier*, 2017-NMSC-
8 017, ¶¶ 15-22, 394 P.3d 959. We proposed, however, that since *Le Mier* still required
9 a consideration of the factors identified in *Harper*, affirmance was still proper.

10 {2} Defendant has filed a memorandum in opposition to this Court’s notice of
11 proposed disposition. In her memorandum in opposition, Defendant argues that *Le*
12 *Mier* requires reversal of the trial court’s denial of her motion to suppress, by
13 analogizing to factual similarities between her case and *Le Mier*. However, what
14 Defendant fails to recognize is one important distinction—specifically, that the trial
15 court in *Le Mier* granted the defendant’s request for sanctions, while the trial court in
16 this case has denied Defendant’s request. Thus, because *Le Mier* informs this Court
17 that, as an appellate court, we are to give deference to the discovery sanctions a trial
18 court imposes, and because Defendant has not demonstrated that the trial court abused
19 its discretion, summary affirmance of the trial court’s suppression ruling is proper.

1 {3} To the extent Defendant continues to challenge the sufficiency of the evidence
2 supporting her conviction for driving under the influence, we are equally unpersuaded.
3 Defendant contends that, “when only considering Officer Miller’s testimony of an
4 odor or alcohol, no admission of drinking, and her performance on [field sobriety tests
5 (FSTs)], there was no evidence of impaired driving presented by the State.” [MIO 9]
6 Defendant further argues that “[n]othing in Officer Miller’s testimony, nor the
7 tangible evidence presented at trial, demonstrates that Defendant . . . was less able to
8 operate a motor vehicle mentally, physically, or both. In the State’s most favorable
9 evidence, Defendant . . . approached a roadblock, was investigated for DWI, smelled
10 like alcohol, performed poorly on FSTs . . . , was compliant, and was placed under
11 arrest for . . . DWI.” [Id.]

12 {4} We note, however, that “[a]n officer does not have to observe a suspect actually
13 driving in an impaired manner if the officer, based upon all the facts and
14 circumstances has reasonable grounds to believe that [the d]efendant had been driving
15 while intoxicated.” *State v. Sanchez*, 2001-NMCA-109, ¶ 6, 131 N.M. 355, 36 P.3d
16 446 (internal quotation marks and citation omitted). Moreover, we have previously
17 held that “the smell of alcohol emanating from [the d]efendant, [the d]efendant’s lack
18 of balance at the vehicle, and the manner of [the d]efendant’s performance on the
19 FSTs constituted sufficient circumstances to give the officer the requisite objectively
20 reasonable belief that [the d]efendant had been driving while intoxicated.” *State v.*

1 *Granillo-Macias*, 2008-NMCA-021, ¶ 12, 143 N.M. 455, 176 P.3d 1187. Here, the
2 trial court found that Defendant “moved her head—contrary to instructions—during
3 the [horizontal gaze nystagmus], turned incorrectly on the walk-and-turn, put her foot
4 down during the one-leg-stand, and her performance on the countdown test was ‘really
5 bad.’ ” [RP 138] In addition, the trial court found that Defendant smelled of alcohol
6 and had been drinking, despite her denial, and the officer testified that Defendant’s
7 eyes were bloodshot and watery. [Id.] Thus, viewing this evidence in the light most
8 favorable to the trial court’s ruling, we conclude there was sufficient evidence to
9 support Defendant’s conviction.

10 {5} Accordingly, for the reasons discussed above, in this Court’s notice of proposed
11 disposition, and in the district court’s memorandum opinion, we affirm.

12 {6} **IT IS SO ORDERED.**

13
14 _____
LINDA M. VANZI, Chief Judge

15 **WE CONCUR:**

16 _____
17 **MICHAEL E. VIGIL, Judge**

18 _____
19 **EMIL J. KIEHNE, Judge**