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IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080903-CA
v.)	
)	F I L E D
Johnny Lee Morgan,)	(September 23, 2010)
)	
Defendant and Appellant.)	2010 UT App 262

Third District, West Jordan Department, 071401315
The Honorable Royal I. Hansen

Attorneys: Herschel Bullen, Salt Lake City, for Appellant
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake
City, for Appellee

Before Judges Orme, Thorne, and Christiansen.

PER CURIAM:

¶1 Johnny Lee Morgan appeals from a conviction and sentence for unlawful sexual activity with a minor, a class A misdemeanor. We affirm.

¶2 Morgan asserts that his guilty plea was not entered into knowingly and voluntarily because he was not informed of the "jurisdictional element . . . embedded in the offense itself" during the colloquy with the trial court. However, jurisdiction is not an element of a criminal offense. Utah Code section 76-1-501(3) states that "[t]he existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence." Utah Code Ann. § 76-1-501(3) (2008). When a question of jurisdiction arises, this determination is made by the judge, not the jury. *See id.* § 76-1-201(8); *see also State v. Payne*, 892 P.2d 1032, 1033 (Utah 1995) ("[I]t is the court, not the jury, that must determine whether jurisdiction is proper."). Further, "[i]f no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction." Utah Code Ann. § 76-1-201(5)(a). Thus, jurisdiction is not an element of the offense.

¶3 Similarly, prior to a trial court's acceptance of a plea, rule 11 of the Utah Rules of Criminal Procedure requires the court to find that "the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements." Utah R. Crim. P. 11(e)(4)(A). Because jurisdiction must be established only by a preponderance of the evidence, not beyond a reasonable doubt, rule 11 does not contemplate that jurisdiction is an element of the offense that must be explained during the plea colloquy.

¶4 Affirmed.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Michele M. Christiansen, Judge