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Justice Sought for children of Bowraville – Double jeopardy laws open way

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An alleged serial killer is a step closer to being tried for the murder of three children on the NSW Mid-North Coast, after the Attorney-General bowed to public pressure and announced the highest criminal court in the state would be asked to hear the case.

Colleen Walker-Craig, 16, Evelyn Greenup, 4, and Clinton Speedy-Duroux, 16, disappeared from the same road in Bowraville within five months of each other in 1990 and 1991. In a major breakthrough in the 25-year-old case, NSW Attorney-General Gabrielle Upton will ask the NSW Court of Criminal Appeal to hold a retrial of the man acquitted of two of the crimes so that all three murders can be heard together.

"After careful consideration, I have decided that there should be no further delay in bringing this matter to court," Ms Upton said. "The best and most transparent way to deal with this tragic case is to make an application for retrial to the NSW Court of Criminal Appeal."

Leonie Duroux, the sister-in-law of Clinton Speedy-Duroux, told Fairfax Media she was "so excited" at the breakthrough.

"These kids deserve justice. They were innocent. They didn't deserve to die," she said. "It's just what we've been fighting for. It's a chance to argue it fairly. Unless you argue the three cases [together] you don't get the full picture."

Detective Inspector Gary Jubelin, who has worked on the case for almost 20 years, told Fairfax Media the news came as a surprise to the police and the families.

"It's been a battle for the families to get the matter to this point, it's been a quarter of a century that they've been trying to get justice for their families and they see this as a step in the right direction," he said.

"The families contacted me straight after the Attorney-General had notified them, and they were overcome with emotion."

Detective Inspector Jubelin has previously said the Aboriginal families suffered racism and disrespect at the hands of authorities.

A white man, known to the Indigenous community in Bowraville, was tried and acquitted of the murders of two of the children and was also a suspect in Colleen Walker-Craig's death. Her body has never been found.

The families of the children have long called for the suspect to be tried for all three crimes together because of evidence they say links the cases to each other and the alleged killer.

But the double jeopardy principle - which prevents a person facing a criminal trial more than once for the same crime - has been regarded as a stumbling block to a retrial.

The state's double jeopardy laws were changed with the Bowraville cases in mind in 2006 to allow a person to be tried again for the same crime if "fresh and compelling evidence" came to light.

But there remains a fraught legal question about whether evidence said to link the cases to each other and the alleged killer meets the legal definition of "fresh" and has not been previously "adduced" in court.

The evidence was available at one of the trials but could not be used because of rules of evidence that have since been changed.

NSW upper house Greens MP David Shoebridge led the push in May for the laws to be changed again to ensure the Bowraville cases could be retried but the move was not supported by the government or the Labor opposition.

But he believes the NSW Court of Criminal Appeal could choose to interpret existing double jeopardy provisions in the same way as courts in England, which would allow the cases to be retried.